TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 296.

THE STEAMER STARS AND STRIPES, THOMAS B. WATTSON, CLAIMANT, APPELLANT,

vs.

HIRAM S. HOMER ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED [illegible], 1859.

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vs.

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1 Pleas before the honorable the judges of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1868, No. 1.

It is thus contained:

In the District Court of the United States for the eastern district of Pennsylvania, in admiralty.

HIRAM H. HOMER AND OTHERS
vs.
THE STEAMER STARS AND STRIPES.

Pleas before the honorable the judge of the District Court of the United States in and for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered, that on the eleventh day of May, A. D. 1867, Messrs. Fallon & Serrill, proctors of said court, appeared before the said court and exhibited the libel and complaint of Hiram H. Homer, on behalf of himself and others, owners of the schooner Madonna, against the steamer Stars and Stripes, in a cause of collision, and the same being read and filed, is in the words following, to wit:

2 To the Honorable John Cadwalader, judge of the District Court of the United States for the eastern district of Penna., in admiralty:

The libel and complaint of Captain Hiram H. Homer, master of the schooner Madonna, as well on his own behalf, and on behalf of E. A. Upton, A. P. Vesey, and ——— Tyson, owners of the said schooner, residents of the State of Maine, as also on behalf of the owners and all parties in interest of the cargo of said vessel, hereinafter mentioned, against the steamer "Stars and Stripes," now lying in the port of Philadelphia, and within the admiralty and maratime jurisdiction of this honorable court, her engine, machinery, boats, tackle, apparel and furniture, and against all persons intervening for their interests therein, in a cause of collision, civil and maratime, alleges and articulately propounds as follows, to wit:

First. That this said schooner Madonna is a vessel of about 108 tons burthen, and at the time of the collision hereinafter set forth was duly licensed and employed in the business of commerce and navigation between the ports of Philadelphia and Portland, in the State of Maine.

Second. That the said schooner Madonna, on the ninth day of May, 1867, sailed from the port of Philadelphia, with a crew of four men, exclusive of the master, and having on board the following cargo, to wit:

189 tons of coal.
100 boxes of oranges.
39 barrels of beef.

Third. That about half past eight o'clock p. m., on the evening of said day, she came to anchor at a point in the river Delaware about eight miles below Reedy island, and about two and a half miles above Duck creek, near the mouth of Black Bird creek. It was then low water, and the said vessel lay about a mile from the Pennsylvania shore, in about three fathoms of water, heading down stream, about in the direction of the course of the river.

3 Fourth. That while so lying at anchor, the said schooner was run into and sunk by the steamer "Stars and Stripes" aforesaid, about half-past eleven o'clock p. m. The steamer is a vessel of about 500 tons burthen, and was coming up the river with the flood tide, on her way to the city, and could easily have passed clear of the schooner on her port side had she been properly steered. The schooner had a bright light in her fore rigging, the night was clear and moonlight, and libellant's vessel could easily have been seen by the steamer at a distance of more than two miles.

The latter vessel, instead of keeping her way up the channel, as she should have done, and had ample room so to do, negligently and carelessly headed for the libellant's vessel, on approaching her, and struck her on her port quarter, and in a few minutes she filled and sunk.

Fifth. That the said collision was caused wholly by the fault and negligence of the said steamer; nor could the same have been averted by any means in the control of the said schooner.

Sixth. That at the time of the aforementioned loss of the said schooner "Madonna" the parties above named were the true and lawful owners thereof, and her value was about ten thousand dollars. The value of her cargo was about three thousand dollars.

The libellant had personal effects on board said vessel of the value of about six hundred dollars, which are wholly lost, making the total loss, by reason of the negligent and unskilful management of said steamer, and of the collision thereto occasioned, about the sum of thirteen thousand six hundred dollars, besides net value of whatever may be recovered from the wreck.

That all and singular the premises are true.

Wherefore the libellant prays that process in due form of law may issue against the said steamboat "Stars and Stripes," her engines, machinery, boats, tackle, apparel and furniture, and that the

4 honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain and the court is competent to give.

H. H. HOMER.
FALLON & SERRILL,
Proc. for Libellant.

Hiram H. Homer, libellant above named, being duly sworn, doth depose and say, that he is master of the schooner "Madonna," above named, duly appointed by and acting on betalf of the owners of said vessel, and that the facts set forth in the foregoing libel are true.

H. H. HOMER.

Sworn and subscribed before me this 10th day of May, A. D. 1867.
CHARLES S. LINCOLN,
Pro Clerk.

It is agreed that this case be docketed with like effect as if the attachment had been issued and served on the steamer named in the libel, and that stipulation be entered as if the vessel had been duly attached.

R. C. McMURTRIE,
For Owners of Steamer.
FALLEN & SERRILL,
For Libellant.

Application on behalf of Bowen & Johnson to be made parties with libellant in this cause.

Stipulation for costs on part of the libellant waived.

And afterwards, to wit, on the fifteenth day of November, A. D. 1867, the said proctors, Messrs. Fallon & Serrill, present the applications and petitions of Messrs. Bowen & Johnson, of Bangor, in the State of Maine; William McWilliams and Mickle C. Paul, late trading as McWilliams & Paul, in the city of Philadelphia, and the Anthracite Insurance Company, of the said city of Philadelphia, which being read and filed are in the words following, to wit:

U. S. D. C., in admiralty.

E. A. UPTON
vs.
THE STEAMER "STARS AND STRIPES."

Adam H. Warthman, being duly sworn, says: That on or about the 7th day of May, 1867, the firm of A. H. Warthman & Co. shipped on board the schooner "Madonna," then lying in the port of Philadelphia, and bound on a voyage to Bangor, Maine, thirty-two bbls. and ten half bbls. of beef, of the value of nine hundred and three dollars, to be delivered at said last-named port, as per bill of lading signed therefor.

That said beef was sold by deponent's said firm to Messrs. Bowen & Johnson, of Bangor, Maine, and was shipped to them.

That about the 8th day of May, 1867, the said schooner was run into and sunk by the said steamer "Stars and Stripes."

That a libel has been filed by the owners of said schooner in the above case for themselves and all others interested in this court against the said steamer, to recover damages for said collision.

That the beef shipped as aforesaid was wholly lost, except a few bbls. thereof, which was recovered in a damaged condition.

A. H. WARTHMAN.

Sworn before me this first day of November, 1867.
CHARLES SERGEANT,
U. S. Commissioner.

6 *Petition of McWilliams & Paul to be made parties with libellant.*

To the Honorable John Cadwalader, judge of the District Court of the United States for the eastern district of Pennsylvania, in admiralty:

The petition of Wm. McWilliams and Mickle C. Paul, lately trading as McWilliams & Paul, of the district aforesaid, respectfully sheweth:

That on or about the 8th day of May last they shipped on board the schooner "Madonna," then lying in the port of Philadelphia, and bound on a voyage to Portland, Maine, one hundred and twenty-five boxes of oranges, of the value of six hundred and fifty-six 25-100 dollars, to be delivered at said last-named port, as per bills of lading signed therefor.

That about the eighth day of May last the said schooner, while proceeding on her said voyage, was run into and sunk by the steamer "Stars and Stripes."

That a libel has been filed by the owners thereof, for themselves and all parties interested in said court, to recover damages for said collision; that the said boxes of oranges were wholly lost.

Wherefore they pray to be made parties to said libel, and that they may have decree for such relief and redress as they may be justly entitled to in the premises.

WM. McWILLIAMS,
For self and M. C. Paul.

On the 31st day of October, A. D. 1867, personally appeared William McWilliams, and was duly sworn to the truth of the foregoing petition.

WM. McWILLIAMS.

Before me—

CHARLES SERGEANT,
U. S. Commissioner, E. D. Pa.

7 *Petition of the Anthracite Insurance Company of Philadelphia to be made parties with libellant.*

To the Honorable John Cadwalader, judge of the District Court of the United States for the eastern district of Pennsylvania, in admiralty:

The petition of the Anthracite Insurance Company of Philadelphia respectfully sheweth:

That about the 1st of May, 1867, the New York and Schuylkill Coal Company shipped on board the schooner Madonna, then lying in the port of Philadelphia, and bound on a voyage to Portland, Maine, one hundred and eighty-nine tons of coal, to be delivered at said last-named port, as per bill of lading delivered therefor.

That about the 8th day of May last the said schooner, while pro-

ceeding on her said voyage, was run into and sunk by the steamer "Stars and Stripes."

That a libel has been filed by the owners of the said schooner, for themselves and all others interested, in this court against the said steamer, to recover damages for said collision.

That your petitioners were insurers on said coal, and on 16th May last they paid the loss thereon, (the said coal being totally lost by reason of said collision,) amounting to the sum of nine hundred and forty-five dollars, to the said the New York and Schuylkill Coal Company.

Wherefore they pray to be made parties to said libel, and have a decree thereon for such relief and redress as they may justly be entitled to in the premises.

FALLON & SERRILL,
Proctor for the Anthracite Ins. Co.

8 On the 31st day of October, A. D. 1867, personally appeared William F. Dean, vice-president of the Anthracite Insurance Company, and was duly sworn to the truth of the foregoing petition.

WILLIAM F. DEAN.

Before me—

BENJAMIN PATTON,
U. S. Commissioner.

And thereupon, on motion of Messrs. Fallon & Serrill, it is ordered that the said firms of Bowan & Johnson and McWilliams & Paul, and the said the Anthracite Insurance Company of Philadelphia, be made parties with the libellants in this cause.

And on the 11th day of May, A. D. 1867, stipulation is entered as if the said vessel had been attached, and the same being filed, is in the words and figures following, to wit :

UNITED STATES, *Eastern District of Pennsylvania, ss:*

Be it remembered, that a special District Court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the 11th day of May, A. D. 1867, and in the 91st year of the independence of the said United States, before the Honorable John Cadwalader, judge of said court, came Thomas B. Watson and Washington Butcher, who, freely and voluntarily submitting themselves to the jurisdiction of the said court, acknowledge themselves to be jointly and severally indebted unto Hiram H. Homer in the sum of eight thousand dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements of the said Thomas B. Watson and Washington Butcher, to the use of the said Hiram H. Homer, upon condition, that whereas a suit is now

9 pending in the said court, for damages sur collision, wherein the said Hiram H. Homer, master of the said schooner Madonna, intervening for himself and others, owners of the said

schooner, is the libellant against the steamer Stars and Stripes, and the said Thomas B. Watson, claimant. Now if the said claimant shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on his part, then this stipulation shall be void, otherwise in force ; and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

[SEAL.] THOMAS B. WALTSON.
[SEAL.] WASHINGTON BUTCHER.

Taken, acknowledged and subscribed in open court on the day and year above written.

CHARLES S. LINCOLN, *Pro Clerk.*

And afterwards, on the sixteenth day of May, A. D. 1867, Morton P. Henry, esq., another of the proctors of the said court, also comes into the said court, and exhibits the answer to the said libel and complaint aforesaid, and the same being read and filed, is in the words following, to wit :

To the Honorable John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania, in admiralty:

The answer of James Holmes. master of the steamship "Stars and Stripes," to the libel of Captain Hiram H. Homer, on behalf of himself and others, owners of the schooner "Madonna," in a cause of collision, sheweth :

First. This respondent has no knowledge of the facts contained in the first and second articles of said libel, saving from the information therein contained ; and he therefore prays that the same may be proved, as libellants are advised.

Second. That the allegations of the third article he believes to be substantially true.

Third. That the facts set forth in the fourth article of said libel are substantially true, excepting so much of the said article as attributes the collision to the carelessness and negligence of those in charge of the "Stars and Stripes."

Fourth. That the true facts in relation to the said collision are as follows : That the steamship "Stars and Stripes" was coming up the river Delaware, on a voyage from Havana to Philadelphia, in charge of a duly licensed pilot, taking her soundings from the western side of the channel, as is the custom in all vessels running up the Delaware river at night ; that the wind was westerly, and as the steamship was approaching the schooner "Madonna" another schooner was standing up the river with a fair wind ahead of the "Stars and Stripes ;" that the steamship was running about nine knots an hour, and the helm of the steamship was directed by the pilot to be put to

starboard, so as to pass the last-mentioned schooner on her port or westwardly side.

The helm of the steamship was continued starboard until a proper direction of the steamship's course was obtained, in order to pass between the schooner under weigh and the Madonna, when the order was given by the pilot to steady the wheel, so as to carry a straight helm and direct the head of the steamship on that course; that in steadying the helm the wheel-ropes on the drum of the wheel of the "Stars and Stripes" jammed and thereby prevented the wheel from revolving and the helm from coming amidships, and the course of the vessel, in consequence of the accident to the wheel-ropes, was turned from the course she was holding when the order was given to
11 steady, and directed into and against the said schooner "Madonna," causing the collision as aforesaid.

Fifth. That immediately on the happening of the accident to the wheel ropes, the mate rung the bell to stop and back the engine, but the time and space did not admit of that order being carried into effect in a sufficient time to avoid the collision.

Sixth. That the course of the steamship at the time when the order was given to steady the helm would have taken the steamship over one hundred yards from the port side of the schooner Madonna. That the wheel of the Stars and Stripes is rigged with raw hide tiller ropes, which are the best for that purpose, and was in all respects rigged and constructed in the usual and proper manner for the purpose of navigation. That the jamming of the tiller rope was caused by the righting of the helm, which took up the slack of the port wheel rope, causing it to override on the drum of the wheel, and preventing the wheel from revolving, which is an accident which could not be avoided by any care or watchfulness of those in charge of the wheel of the steamship, and is therefore an unavoidable accident, for which those in charge of the steamship and the owners thereof are not responsible.

That all and singular the premises are true.

Wherefore the respondent prays that the honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

JAMES HOLMES.

Sworn and subscribed before me this 16th day of May, A. D. 1867.

CHARLES S. LINCOLN,
Pro Clerk District Court.

12 And afterwards, on the 15th day of November, A. D. 1867, comes the said respondent by his proctor, and by leave of the court files the following amendment to his answer heretofore filed in this cause, to wit:

To the Honorable John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania:

And now, October 10th, 1867, comes James Holmes, master of the steamship "Stars and Stripes," and prays leave to amend his answer to the libel of Hiram H. Homer, by adding the following article to his said answer:

Article 7th. That the steamship "Stars and Stripes" is a vessel of the burthen of 400 tons, or thereabouts, fitted for carrying passengers as well as freight, and at the time of the said collision was engaged in the foreign trade, to wit, from the port of Havana, in the island of Cuba, to the port of Philadelphia, in the State of Pennsylvania, and that by the laws of the State of Pennsylvania it is provided that all vessels bound to or from any port on the river Delaware, in the State of Pensylvania, to or from any foreign port or place, shall be obliged to take a pilot, who has been duly licensed by competent authority, for the navigation of the Delaware river and bay, under penalty by the said laws provided, as by reference to the several acts of assembly of the Commonwealth of Pennsylvania will fully and at large appear.

That at the time of the happening of the said collision the said steamship was running up the Delaware river in charge of one John Rowland, a duly licensed pilot for the bay and river Delaware, under a license duly granted by competent authority, viz: by the board of wardens for the port of Philadelphia, and also duly licensed by the United States steamboat inspectors for the district or Philadelphia, as a pilot from Philadelphia to Cape Henlopen, under the provisions of the act of Congress approved the 30th of August, 1862, and at the time of the said collision the course of the said steamship
13 was under the sole control and direction of the said John Rowland, as pilot aforesaid, who gave all the orders in relation to the course and steering of the said steamship while so navigating the Delaware river and bay, without any order, direction, or interference from the master and other officers of the said steamship.

JAMES HOLMES.

Sworn and subscribed before me this tenth day of October, A. D. 1867.

CHARLES S. LINCOLN,
Pro Clerk District Court.

U. S. D. C., eastern district of Penn'a, in admiralty.

Depositions on the part of the libellants, read and filed November 15th 1867.

HOMER
vs.
THE STARS AND STRIPES.

Depositions of witnesses produced, sworn or affirmed, on the part of libellant in the above cause, before Charles Sergeant, United States commissioner, at his office, No. 123 South Fifth street, Philadelphia, the said examination commencing on the 15th day of May, A. D. 1867, at 10 o'clock a. m. Isaac T. Serrill, esquire, of counsel for libellant; Morton P. Henry, esquire, of counsel for respondent.

Abel Lowell, being duly sworn, says: My name is Abel Lowell; I am mate of schooner Joseph P. Ames; I was with my vessel Thursday last, when the accident occurred to the Madonna. My
14 vessel was down river, a little below her, farther out into the stream; we were, I should think, about one-eighth of a mile off from the Madonna, it may be a little more, when the steamer began to sheer; we were bound up the bay; the tide was running up; when I first saw the steamer "Stars and Stripes" she was about a mile in our wake; I watched her, and saw she was coming right for us, and I kept a look-out for her; I was at the wheel; when she got within twice the length of her I called the captain, thinking she was coming on to us sure; I then looked round and saw the boat had sheered; I should say she was about twice her length from us when she began to sheer; she sheered and swung right across the river, her wheel to starboard, until she struck the "Madonna;" I should think it was about three minutes from the time she commenced sheering until she struck; I observed no slacking in her speed, none at all; I should think she was going seven or eight knots; I heard one bell on the steamer, and then the crash right afterwards; I halloed to them, and asked what they were trying to do; some one answered, but I did not hear what he said; I saw the Madonna's light.

Cross-examined.

By Mr. P. Henry:

We were running winds out, wing and wing; the wind was easterly; I think we were going three or four knots; we were nearly opposite the Madonna at the time of the collision; we were loaded; I think we were a little on the western side of the channel; I was not very much acquainted.

ABEL C. LOWELL.

Sworn and subscribed before me this 15th day of May, 1867.

CHARLES SERGEANT,
U. S. Commissioner.

schooner, is the libellant against the steamer Stars and Stripes, and the said Thomas B. Watson, claimant. Now if the said claimant shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on his part, then this stipulation shall be void, otherwise in force ; and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

[SEAL.] THOMAS B. WALTSON.
[SEAL.] WASHINGTON BUTCHER.

Taken, acknowledged and subscribed in open court on the day and year above written.

CHARLES S. LINCOLN, *Pro Clerk.*

And afterwards, on the sixteenth day of May, A. D. 1867, Morton P. Henry, esq., another of the proctors of the said court, also comes into the said court, and exhibits the answer to the said libel and complaint aforesaid, and the same being read and filed, is in the words following, to wit :

To the Honorable John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania, in admiralty:

The answer of James Holmes. master of the steamship "Stars and Stripes," to the libel of Captain Hiram H. Homer, on behalf of himself and others, owners of the schooner "Madonna," in a cause of collision, sheweth :

First. This respondent has no knowledge of the facts contained in the first and second articles of said libel, saving from the information therein contained ; and he therefore prays that the same may be proved, as libellants are advised.

Second. That the allegations of the third article he believes to be substantially true.

Third. That the facts set forth in the fourth article of said libel are substantially true, excepting so much of the said article as attributes the collision to the carelessness and negligence of those in charge of the "Stars and Stripes."

Fourth. That the true facts in relation to the said collision are as follows : That the steamship "Stars and Stripes" was coming up the river Delaware, on a voyage from Havana to Philadelphia, in charge of a duly licensed pilot, taking her soundings from the western side of the channel, as is the custom in all vessels running up the Delaware river at night ; that the wind was westerly, and as the steamship was approaching the schooner "Madonna" another schooner was standing up the river with a fair wind ahead of the "Stars and Stripes ;" that the steamship was running about nine knots an hour, and the helm of the steamship was directed by the pilot to be put to

starboard, so as to pass the last-mentioned schooner on her port or westwardly side.

The helm of the steamship was continued starboard until a proper direction of the steamship's course was obtained, in order to pass between the schooner under weigh and the Madonna, when the order was given by the pilot to steady the wheel, so as to carry a straight helm and direct the head of the steamship on that course; that in steadying the helm the wheel-ropes on the drum of the wheel of the "Stars and Stripes" jammed and thereby prevented the wheel from revolving and the helm from coming amidships, and the course of the vessel, in consequence of the accident to the wheel-ropes, was turned from the course she was holding when the order was given to
11 steady, and directed into and against the said schooner "Madonna," causing the collision as aforesaid.

Fifth. That immediately on the happening of the accident to the wheel ropes, the mate rung the bell to stop and back the engine, but the time and space did not admit of that order being carried into effect in a sufficient time to avoid the collision.

Sixth. That the course of the steamship at the time when the order was given to steady the helm would have taken the steamship over one hundred yards from the port side of the schooner Madonna. That the wheel of the Stars and Stripes is rigged with raw hide tiller ropes, which are the best for that purpose, and was in all respects rigged and constructed in the usual and proper manner for the purpose of navigation. That the jamming of the tiller rope was caused by the righting of the helm, which took up the slack of the port wheel rope, causing it to override on the drum of the wheel, and preventing the wheel from revolving, which is an accident which could not be avoided by any care or watchfulness of those in charge of the wheel of the steamship, and is therefore an unavoidable accident, for which those in charge of the steamship and the owners thereof are not responsible.

That all and singular the premises are true.

Wherefore the respondent prays that the honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

JAMES HOLMES.

Sworn and subscribed before me this 16th day of May, A. D. 1867.

CHARLES S. LINCOLN,
Pro Clerk District Court.

12 And afterwards, on the 15th day of November, A. D. 1867, comes the said respondent by his proctor, and by leave of the court files the following amendment to his answer heretofore filed in this cause, to wit:

To the Honorable John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania:

And now, October 10th, 1867, comes James Holmes, master of the steamship "Stars and Stripes," and prays leave to amend his answer to the libel of Hiram H. Homer, by adding the following article to his said answer:

Article 7th. That the steamship "Stars and Stripes" is a vessel of the burthen of 400 tons, or thereabouts, fitted for carrying passengers as well as freight, and at the time of the said collision was engaged in the foreign trade, to wit, from the port of Havana, in the island of Cuba, to the port of Philadelphia, in the State of Pennsylvania, and that by the laws of the State of Pennsylvania it is provided that all vessels bound to or from any port on the river Delaware, in the State of Pensylvania, to or from any foreign port or place, shall be obliged to take a pilot, who has been duly licensed by competent authority, for the navigation of the Delaware river and bay, under penalty by the said laws provided, as by reference to the several acts of assembly of the Commonwealth of Pennsylvania will fully and at large appear.

That at the time of the happening of the said collision the said steamship was running up the Delaware river in charge of one John Rowland, a duly licensed pilot for the bay and river Delaware, under a license duly granted by competent authority, viz: by the board of wardens for the port of Philadelphia, and also duly licensed by the United States steamboat inspectors for the district or Philadelphia, as a pilot from Philadelphia to Cape Henlopen, under the provisions of the act of Congress approved the 30th of August, 1862, and at the time of the said collision the course of the said steamship
13 was under the sole control and direction of the said John Rowland, as pilot aforesaid, who gave all the orders in relation to the course and steering of the said steamship while so navigating the Delaware river and bay, without any order, direction, or interference from the master and other officers of the said steamship.

JAMES HOLMES.

Sworn and subscribed before me this tenth day of October, A. D. 1867.

CHARLES S. LINCOLN,
Pro Clerk District Court.

U. S. D. C., eastern district of Penn'a, in admiralty.

Depositions on the part of the libellants, read and filed November 15th 1867.

HOMER
vs.
THE STARS AND STRIPES.

Depositions of witnesses produced, sworn or affirmed, on the part of libellant in the above cause, before Charles Sergeant, United States commissioner, at his office, No. 123 South Fifth street, Philadelphia, the said examination commencing on the 15th day of May, A. D. 1867, at 10 o'clock a. m. Isaac T. Serrill, esquire, of counsel for libellant; Morton P. Henry, esquire, of counsel for respondent.

Abel Lowell, being duly sworn, says: My name is Abel Lowell; I am mate of schooner Joseph P. Ames; I was with my vessel Thursday last, when the accident occurred to the Madonna. My
14 vessel was down river, a little below her, farther out into the stream; we were, I should think, about one-eighth of a mile off from the Madonna, it may be a little more, when the steamer began to sheer; we were bound up the bay; the tide was running up; when I first saw the steamer "Stars and Stripes" she was about a mile in our wake; I watched her, and saw she was coming right for us, and I kept a look-out for her; I was at the wheel; when she got within twice the length of her I called the captain, thinking she was coming on to us sure; I then looked round and saw the boat had sheered; I should say she was about twice her length from us when she began to sheer; she sheered and swung right across the river, her wheel to starboard, until she struck the "Madonna;" I should think it was about three minutes from the time she commenced sheering until she struck; I observed no slacking in her speed, none at all; I should think she was going seven or eight knots; I heard one bell on the steamer, and then the crash right afterwards; I halloed to them, and asked what they were trying to do; some one answered, but I did not hear what he said; I saw the Madonna's light.

Cross-examined.

By Mr. P. Henry:

We were running winds out, wing and wing; the wind was easterly; I think we were going three or four knots; we were nearly opposite the Madonna at the time of the collision; we were loaded; I think we were a little on the western side of the channel; I was not very much acquainted.

ABEL C. LOWELL.

Sworn and subscribed before me this 15th day of May, 1867.
CHARLES SERGEANT,
U. S. Commissioner.

Henry P. Turner sworn:

My name is Henry P. Turner; I am captain of the schooner Joseph P. Ames; I was with my vessel when the collision with the Madonna took place; when I came on deck I should not think the vessel was over seventy-five feet from us; her bow was over my larboard davit; she was then sheering; the boat continued to sheer fast; I heard the bell, and then right afterwards the crash; the sound of the bell and the crash were as near as you could get them together; she struck the Madonna on her port quarter; the Madonna was head down stream; it was not over three minutes, or about that time, from when I came on deck, that she struck the "Madonna;" if she had altered her helm at the time I came on deck, there was plenty of room to pass between us and the Madonna; I observed no slacking of her speed until the bell rung.

Cross-examined.

By Mr. Henry:

I was over on the western shore in three fathoms and a half of water; the depth of the channel was to the eastward of us. I did not alter my course as the steamer passed us. The bow of the steamer was not exactly abreast my davit, but a point below. When I came on deck she was then sheering, and was clear of our vessel. When I first saw her I should not say we were going, with tide and all, more than four knots. When I came on deck we were a little below the "Madonna." When the steamer struck the "Madonna" we were nearly abeam. We were loaded with granite, and drew about nine feet. When I say above, if she had altered her course, I mean if she had righted her helm. We were sailing with our port and tacks aboard, the wind nearly southerly.

HENRY P. TURNER.

Sworn to and subscribed before me this 15th day of May, 1867.

CHARLES SERGEANT,
U. S. Commissioner.

Abel T. Lowell, recalled:

When I called the captain, had she kept her course she would have run into us without doubt. We had two lights up. We saw both boats. The moon was up and bright. She did alter her course and did not run into us.

ABEL T. LOWELL.

Sworn to and subscribed before me this 15th day of May, 1867.

CHARLES SERGEANT,
U. S. Commissioner.

16 District Court of U. S., E. D. of Pennsylvania, in admiralty.

HOMER
vs.
THE STARS AND STRIPES.

Depositions of witnesses on behalf of the respondents, taken on the 23d day of May, A. D. 1867:

MAY 23D, 1867.

Present:

Laben L. Lyons, a witness produced on behalf of the complainant, being duly sworn, says:

I reside at Lewes, Delaware; I follow the business of wrecking; I am a member of the wrecking firm of E. J. Morris & Co. I don't think our company ever raised a vessel; we get them off the beach when stranded; that is our principal business, and saving their cargoes and unloading. We have at our disposal means to raise vessels, by hiring vessels. Raising sunken vessels is not our business. We think we could raise a vessel if it could be done; we understand how to do it. We made a contract with Captain Homer to raise the Madonna; and believe paper marked A. H. S. 1 is the contract. I think there is no doubt about it. There are seven in our company. We went up to the Madonna and sent a diver down. We went up in Captain Sandborne's vessel. We proposed to fetch a steam-pump up to her and pump her out. Before we done that Captain Burton made representation that the top of her house was about two foot under water, and our plan was to box the companion way up, put a suction in and pump her out. We expected to repair the hole in the Madonna with a diver. When we made the contract we expected to do it. Those things are never certain. I suppose Captain Burton told Captain Homer that he would do all he could towards it. We went down to the Madonna with a diver, and sent him down, and he examined the condition of the vessel and found she was badly broken the port quarter, and so bad that Captain Sandborne thought it was not practicable to stop it with a diver. Then finding
17 her decks were ten feet under water at low water, and the diver reporting the mud was half way up to his knees on deck, and her main hatch was off, and her companionway open, and he slipped into the hole on her deck where she was broke by the steamer, I concluded it was not practicable to pump her out, being so far under water and so filled up with mud that she would not float if she was pumped out; and the great difficulty in raising a vessel where she lays is being interrupted by the seas. The tide does not set with her, but sets over her crossways. We concluded we would come up and see the captain and give up the contract, and I so reported yesterday to the captain of the Madonna, and we declined to make the attempt. I don't think we could do it with any means we have or have power to get. I suppose there are some means in the United States to raise that vessel at some cost. The means are not

in our power. The diver sent up a water-cask; it was so full of mud the water would hardly run out of the cask, and that had all been taken in at the bung. There was no other hole in the cask.

Cross-examined.

Our diver was sent down last Monday, the 20th of May. I was present when he went down. I never understood the job of raising a sunken vessel. I don't know what men in Philadelphia will undertake it. I only know of two vessels being raised in the Delaware, the John Trucks and a brig off the mud fort at the mouth of the Schuylkill. Captain Sandborne raised the John Trucks. I have had no experience in raising vessels; our business is to get vessels off the beach. The usual way of raising a sunken vessel is by putting chains under her with lighters to float. Pumping her out is another way. Contract is in evidence. She lies abreast of Collins' beach. The river is about four or five miles wide where she lies.

LABAN L. LYONS.

18 Charles H. Sandborne, being duly sworn, says:

I am engaged in the submarine business. I have had experience in the raising of sunken vessels. I am connected with my company. I have raised the ship John Trucks and another brig; I cannot recollect the name of it. The John Trucks is the only vessel I recollect being sunk in the Delaware. Vessels are raised in different ways; sometimes by pumping out, sometimes with vessels alongside and spars across, sometimes by putting casks in them and forcing the water out of the casks by means of air; a vessel is also raised by chains. I went with Captain Lyons to the Madonna. We arrived there Sunday night, and was alongside of the wreck Monday morning. I have a vessel with a diving apparatus. We sent a man down in the vessel to make an examination, to find out how badly she was hurt, and to find out whether her hatches were on, or anything to prevent her being pumped out. The diver reported one hatch off, and described the break made by the steamer as quite a large hole on the port quarter, extending abaft and forwards of the after-part corner of the house. From the situation of the vessel and the diver's description of the break, I told Captain Lyons I did not think it would be prudent to attempt raising her by means of pumping her out. The diver found mud on her decks about a foot deep, describing it by his leg. The barrels of beef taken up and showed signs of mud; a quarter-cask sent up was half full of mud. I think there is no doubt this vessel could be raised. It is only a question of time and expense. I would not undertake the contract for raising that vessel. I would not raise that vessel for what she would sell for and the cargo. A man might be fortunate in raising that vessel, but, taking the chances of wind and weather, I don't think that it would pay him to raise that vessel for what she would sell for, and her cargo when raised; at all events I would not undertake it. I don't think her cargo could be raised at a profit. The vessel could not

19 float if her cargo was taken out. A party going to raise her would do it with her cargo on board. The only means of discharging that cargo would be by divers, and that would be pretty expensive work. The John Trucks was raised by chains being put under her. We got 55 per cent for raising her, ship and cargo. She was a Liverpool vessel; a good deal of dry goods and blankets. She was sunk off Arch street wharf. It makes a great difference in the situation of a vessel about the cost of raising her. In smooth water we have not the same cost and inconvenience and liability to accidents as in rough water. The situation of the Madonna is not particularly exposed; it is liable to be very rough there; at times a very strong tide there. It does not run fore and aft with the vessel; it runs quite at an angle with her deck.

Cross-examined.

I both discharge cargo and raise vessels; the last ship I raised was the John Trucks, about six years ago; I am not what is generally understood as a wrecker; by that I mean men who work on the beach and get off vessels; I have charge of a diving apparatus.

Question. Be kind enough to state what difficulty there would be in sweeping and raising her with chains.

Answer. No great difficulty in getting the chains round, but from the exposed position of the wreck great difficulty would be had in keeping the vessels used to raising the wreck in their place; also, the motion of the sea liable at any moment to come up, is liable to break the spars or chains.

This motion of the sea does not allow a steady lift on the chains, but a surging motion, which is the worst strain that could be brought on the spars; there is no sea here except when it is blowing; it does not take much of a wind there to make a sea; there is no roll from the ocean; she lays about two miles from the Delaware shore, which is the nearest land; I have raised vessels that have been in more exposed places, but more valuable.

In forming my estimate of the value of a contract to raise her, I take three thousand dollars to be the value of the vessel
20 and cargo of the vessel when raised. I would not agree to raise that vessel for three thousand dollars; to raise that vessel it would require two schooners of about 100 tons each, with a tug boat to be there all the time, and half a dozen men beside the crews. We took off fourteen barrels and eight half barrels of beef.

CHARLES H. SANDBORNE.

D. C. U. S., E. D. Pa., in admiralty.

H. H. HOMER
vs.
STEAMER STARS AND STRIPES.

Deposition taken on behalf of libellant, before me, Charles Sergeant, United States commissioner, at my office, 123 South Fifth street, Philadelphia, on the fourth day of June, A. D. 1867. Present: Isaac Serrill, esq., for libellant, Morton P. Henry, esq., for respondent.

Captain H. H. Homer, being duly sworn, doth depose and say:

I am captain of the schooner "Madonna;" she is a vessel of about one hundred and eight tons burden, new measure, one hundred and forty-seven old. I left Philadelphia on the morning of the 9th of May, bound for Porland, Maine; my cargo was one hundred and eighty-nine tons of coal, one hundred and twenty-five boxes of oranges, thirty-two whole barrels of beef, and ten half barrels. I had personal effects and property on board as follows, that is belonging to me: a quadrant worth forty dollars, forty-five dollars in money, charts to the amount of one [one] hundred and ten dollars, and books worth twenty dollars, navigation book, a pair of opera glasses
21 worth twenty-five dollars, and clothing to the value of at least one hundred and twenty-five dollars, a barometer, fifteen dollars, a trunk and desk about eight dollars, also my watch, value thirty dollars. These figures are what these articles cost me, and they are worth that much now; it would cost me that much to replace them. The steamer "Stars and Stripes" run into me on the night of that day.

I had a crew of four men, George W. Coulson, Jay McCabe, Charles Luce and Louis Tuttle. I estimate their clothing to be worth at least one hundred and fifty dollars; we were all below asleep, except one man, Jay McCabe, who was on deck at the time of the collision; it happened about half-past eleven at night; the light was up in the fore-rigging.

Cross-examined.

By Mr. Henry:

I bought the quadrant in New York; it was new. I paid forty dollars for it. I had Coast Survey charts, West India charts; the Coast Survey charts were for the northern and southern coasts. I had not the United States Survey charts; I had Blunt's charts; I hadn't a whole set.

H. H. HOMER.

Sworn and subscribed before me, this 4th day of June, 1867.
CHARLES SERGEANT,
U. S. Commissioner.

22 *Depositions on the part of the respondents.—Read and filed November 15th, 1868.*

HOMER
vs.
THE STARS AND STRIPES. } In admiralty.

Respondents' evidence.

MAY 16TH, 1867.

Present: Mr. Serrill, for libellants; Mr. Henry, for respondents.

James Daly, a witness produced on behalf of respondent, being duly sworn, says:

I was engineer on board the "Stars and Stripes" at the time of collision. I knew nothing of it, save at twenty-five minutes past 11 o'clock the bell rung to stop; this was before the collision. As soon as it rung I went and stopped the steam off the engine, and it remained so till the bell rung to back. I backed the engine; I didn't back till after the collision though.

Cross-examined.

I was standing at the engine-room door blowing the boiler down when the bell rang to stop; this was eight or ten feet from the lever; it was about five seconds from the time the bell rung till I stopped off steam.

Question. What was the interval of time from the first ringing of the bell and the signal to back her?

Answer. About twenty seconds.

Q. How soon after the first signal was the crash or collision?

A. I didn't hear any crash; the collision was five or ten seconds, ten seconds, I guess, after the first signal.

Q. Then the collision came before the order to back?

A. Yes.

23 *Re-examined.*

The jar was not heavy in the engine-room. I thought we were upon the mud somewhere; it would take pretty near half a minute to stop the engine and reverse it; the engine was making about sixty-four revolutions per minute, she was going between seven and a half and eight knots per hour; we were running seventeen pounds of steam.

Re-cross examined.

All I had done before the collision was to shut off the steam; I was ready to reverse. The shutting off of the steam during the ten seconds might have made a little change in the speed of the vessel, but not much.

JAMES DALY.

Sworn and subscribed the 16th day of May, A. D. 1867, before me
AUBREY H. SMITH,
U. S. Commissioner.

James Cain, a witness produced on behalf of the respondent, being duly sworn, says:

I was second officer on the "Stars and Stripes;" on the night of the collision the pilot had charge of the vessel, and I had charge of the deck. The pilot gave directions as to the course of the vessel; the pilot had been to Havana with us and back. I was in the wheel-house; a man named Jack was at the wheel; the pilot was standing forward of the pilot-house, which is abaft foremost; the wheel is in the pilot-house; the wheel was rigged straight ship fashion. I recollect a schooner standing up the river ahead of us that night; the side that I was standing on; she was rather on our starboard bow. We passed that schooner on her port side; to pass that schooner we starboarded our helm; the schooner was going between five and six knots; we were going over seven.

The Madonna was a good way ahead, 150 yards, when the order was given to starboard our helm; the order to starboard our
24 wheel was obeyed. We had drawn up then with the vessel that was under her way, and the order was given to steady; our vessel was heading rather to the eastward, to the right of the vessel at anchor, and she would have gone clear of her at the time. The order was given to steady; the order to steady was obeyed, until the wheel roped jammed, the starboard wheel rope jammed underneath the other, on the port wheel rope, and we couldn't get it over; I then rang the bell to stop her. The helm did not get amidships. The effect of the jamming of the tiller ropes was we couldn't get her to come off; our vessel fell off to the port to the left hand towards the position of the vessel at anchor, and struck her; she struck her abaft the main rigging.

I wouldn't say where she struck her, as I was not on deck; she had sunk, I think, when I came to look after her. There might have been 200 yards difference between the schooner under way and the schooner that was sunk, that is, they were 200 yards apart. I saw with my own eyes when the man at the wheel sung out the wheel is jammed. I came and looked and saw one rope bite over the other. The wheel ropes cross under the pilot-house floor; the ropes go down perpendicularly from the drum of the wheel.

Cross-examined.

We saw the schooner under way a mile off; I can't say if it was more than a mile. I am not familiar with the channel there. We were about 50 yards behind her when the order to starboard was given. The two schooners were not directly opposite; the schooner under way was about 200 yards below the other one. If the schooner had been opposite, there would have been about 150 yards between them. When we sheered we went about 20 yards from the port quarter of the schooner under way; we were then heading to the west. Then the order was given to steady, and that is the order the helm didn't obey.

Q. Then you are not mistaken when you say she was heading to the east when the order steady was given?

25 A. She wasn't heading due east or due west; we were heading to the Pennsylvania side. When the order to steady was given we were abeam of the schooner under way; a few seconds after the order of steady I saw the rope jam; then the bell was rung to stop; then a few seconds after came the collision; her helm remained all this time jammed to starboard. I have been following the sea 26 years. I am pretty familiar with the rules for navigating and passng vessels.

Q. Do you know of any reason why the steamer could or should not have passed the schooner under way on the starboard side?

A. Yes; we would have struck her if we had ported when the order was given to starboard.

Q. That is, you mean you refer to the time when you were 50 yards from the schooner under way?

A. I refer to the time when the order to starboard was given.

Q. If the order to port was given half a mile down the river, wouldn't you have gone to the starboard of the schooner?

A. Yes.

Q. Couldn't you easily have gone to the starboard of the schooner under way, if the proper order had been given at the proper time?

A. Certainly.

JAMES CAIN.

Sworn and subscribed this 16th May, A. D. 1867, before me.

AUBREY H. SMITH,
U. S. Commissioner.

James Holmes, a witness produced on behalf of the respondent, being duly sworn says:

I am captain of the Stars and Stripes, and was on the night of the collision. There is an iron shear or gin in the iron end of the tiller, and a chain leads from this shear out the ship's side; that chain is fastened to rods which run the length

26 of the ship to nearly opposite the pilot-house; the raw hide ropes are spliced into the end of the rod; the rods are encased in rollers; the raw hide ropes lead from the ship's sides into the pilot-house under the floor; the rope leading from the starboard side passes through a sheve and up to the port side of the wheel, and so around the drum of the wheel; the port side vice versa. Our ship was coming up in the wake of the schooner under way. I was on deck; we came up astern of her within 50 or 100 yards, when the pilot gavethe order to starboard; the ship's head fell off by her starboard wheel or helm until clear of the schooner under way, when the order was given by the pilot to steady; the ship's head still continued to fall off when the pilot sang out to port, at which time the man at the wheel reported the wheel ropes jammed; the bell was rung immediately to stop the engine; we were 100 yards below the "Madonna," when the order was given to starboard the wheel; if the vessels had

been opposite each other they would have been 150 yards apart; at the time the order was given to steady the steamer was heading clear of the Madonna, and rather nearer to her than to the schooner at anchor; there was but a few seconds between the order to steady and order to port. I have followed the sea about 20 years; jamming of the tiller-ropes is not an accident we can avoid at the time; to start the wheel again you would have to heave the wheel back to starboard to ease it; the overriding of the ropes causes the jamming; the slack rope which is caused by the wheel being either to starboad or port causes the overriding; all wheels with chains or ropes are liable to it; chains, I think, more than ropes, as it is apt to sink. I have seen ropes jammed frequently; all American sea-going and river steamers have their wheels forward; it is handier for the pilot, and is superior to having it at the stern. We were running on the western side of the channel, in about four fathoms of water; we were sounding on the western side, which is usual, as there the soundings are gradual, while on the east they are bold. Our vessel was going from
27 7½ to 8 knots; the schooner was going about 5 knots from the way she was going; she had her booms on the starboard side, and her port tacks aboard.

Cross-examined.

Our vessel is about 200 feet long; I can't tell exactly; her tonnage is 484; the ship had an average cargo of sugar; it was within a few seconds between the order to steady and the report of the jamming of the ropes, then the bell was rung immediately, simultaneously; the collision was a few seconds after that; I didn't see the ropes jammed in the pilot-house; I was forward with the pilot; the consequence of the jamming was, the helm remained to starboard and took us right into the "Madonna."

Question. How was it, then, that when the order to starboard was given, or after it was given, you could have been heading clear of the Madonna's stern?

Answer. When the order was given to starboard the wheel was kept in that position until the head of the ship was brought into position to clear both vessels; I could see that from the forward deck, and from the fact that the wheel still kept starboard she run into the Madonna, and as the wheel jammed she still kept swinging round, and so ran into the Madonna; to loose the jam we would have to throw the wheel to starboard and back again to port; that would have cleared the wheel; this would have taken quarter of a minute to have cleared it, and another quarter minute to have got the wheel to port again, and there was no time in this emergency to do that; if there had been time, such a manœuvre would have avoided the collision.

Q. Supposing these orders, to wit. the order to starboard and the order to steady, and the jamming of the rope had taken place before you had come quite so close to the schooner under way, say 300 or 400 yards down or further, wouldn't you have been enabled to loose the rope and avoid the collision?

A. No; there would have been more danger of running into the Madonna than ever. If we had done this further down, it
28 would have avoided it, but 300 or 400 yards would not have done. There was no perceptible diminution of our speed. I suppose there was a little, but it was hardly perceptible.

Re-examined.

We struck the Madonna about 10 feet forward of her transom, at an angle of near 45 degrees. The Madonna swung some when we struck her. I saw both vessels a mile down.

Re-cross-examined.

We could have gone to the starboard of the schooner under weigh, but it would have thrown us more out into the channel; but then we would have had trouble to get our soundings.

JAMES HOLMES.

Sworn and subscribed this 16th day of May, A. D. 1867, before me.

AUBREY H. SMITH,
U. S. Commissioner.

John Rowland, a witness produced on behalf of the respondent, being duly sworn says:

I was the pilot of the steamer Stars and Stripes at the time of the collision with Madonna. I am a full branch Delaware pilot. I went on a voyage on the Stars and Stripes to Havana and back. I took charge of the vessel at the mouth of the bay. The collision took place about 10 minutes before 12 o'clock at night. The course of the channel at the place of collision, for a vessel going up, is NE. by N. I saw the Madonna's light one-half a mile off, anyway. I remember a schooner under weigh going up ahead of us. We passed on the larboard side of the schooner under weigh, and on the starboard side of our vessel. The schooner was going all of five knots. I suppose we were going seven knots. To pass the schooner, I gave the order to starboard the wheel. I can't say ex-
29 actly how far astern we were when I gave the order; we were a good distance astern. It was a dark night. We didn't keep the wheel long that way. The wheel-ropes caught, and if it hadn't been for that, we would have had no trouble. After the order to starboard, I gave the order to steady. When I gave the order to steady our vessel was heading NW.

Question. When you gave the order to steady what was the course of the Stars and Stripes in reference to the stem of the schooner you sunk?

Answer. She bore about W. NW. from me. It is very often that wheel-ropes catch. If our wheel-rope had not caught, I suppose we

should have gone 300 yards clear of her. We were in 3 fathom water We were taking soundings on the western side of the channel, that is the usual side, as there are hills and hollows on the other side. We struck the schooner on her quarter.

Cross-examined.

The channel there is about one-half mile wide. I don't know how far we were from the schooner when I gave order to starboard. I think we heard a hail from the schooner under weigh. I starboarded before they hallowed to us. I starboarded, I think, five minutes before they cried to us. We should, according to law, go to port in overtaking a sailing vessel. I consider we have got a right to go either side. The average depth of the fathom is seven fathoms.

his
JOHN + ROWLAND.
mark.

Sworn and subscribed this 16th May, A. D. 1867, before me.
AUBREY H. SMITH,
U. S. Commissioner.

30 John G. Lowber, a witness produced on behalf of the respondent, being duly sworn, says:

I was a seaman on the Stars and Stripes when she struck the Madonna. I was at the wheel at the time of the collision. The second mate was also in; the pilot and captain were forward. I remember seeing a schooner under weigh. We were steering in her wake. I received orders to starboard the helm, and I did so. We were some 200 or 300 yards from her when the order was given. I didn't pay much attention. I think I turned the wheel around about once and a half. I then received an order to steady the wheel from the forward deck; it was in the pilot's voice. I went to steady the wheel and it caught. I sung out that the wheel rope had jammed. The mate left the wheel and struck the bells. When I went to starboard the wheel the mate went to the wheel. I didn't observe the course of our vessel. I didn't get the wheel clear before the collision, We struck the schooner nearly head on. She was lying with her head down stream.

Cross-examined.

I look for the pilot's orders; it is not my business to lookout; about three revolutions from amidships would put the wheel hard astarboard. There was no signal on the bell till after the ropes jammed, and the collision came in three, four or five seconds after striking the bell. This jamming of the ropes has happened to me before. It would take all of one-half a minute to get the helm loose and back to port.

JOHN G. LOWBER.

Sworn and subscribed this 16th day of May, A. D. 1867, before me.

AUBREY H. SMITH,
U. S. Commissioner.

31 MAY 23D, 1867, 11 a. m.

Present: Mr. Serrill, for libellant, Mr. Henry, for respondent.

Elisha C. Baker, a witness produced on behalf of the respondent, being duly sworn, says:

I have followed the sea, coastwise and foreign, fourteen years, on steamships part of the time. American steamers almost universally have their steering apparatus forward in order to see, as the pilot-house is forward. The vessels are liable to jam their wheel-ropes, if the wheel is hove quick; they jam sometimes on the drum of the wheel, and sometimes underneath where the ropes cross. It is caused by one rope giving and one taking, causing the loose one to override; the effect is to stop the tiller's revolving. I don't know of any means of rigging an apparatus by which that can be avoided. I have met with this accident several times. Once it happened to me in the government service; it has happened to me two or three times in fourteen years. In my opinion there is no blame to be attached to a man at the wheel for the jamming of the tiller-rope. It would in my opinion happen to the most careful man. It is an accident of rare occurrence. Raw hide are the best ropes; they wear better; rope is liable to stretch more than hide.

Cross-examined.

This accident is more likely to happen in an emergency when there is a quick movement than at another time. When the hitch occurs, the way to remedy it is to reverse the wheel; sometimes it takes five minutes, sometimes in two minutes. The time necessary to free the jam is the time taken to reverse the wheel. I know of no mechanical contrivance to avoid that; a series of deep grooves in the drum would not avoid it.

ELISHA C. BAKER.

Sworn and subscribed this 23d May, A. D. 1867, before me.

AUBREY H. SMITH,
U. S. Commissioner.

32 David S. Stetson, whose testimony it is agreed by counsel shall be read by consent as if sworn to:

I have followed the sea fourteen years, eight years as master. I have read the deposition of Captain Baker, and fully agree therewith, both as to the facts in examination and cross-examination.

D. S. STETSON.

William B. Sheldon, a witness produced on behalf of respondent, being duly sworn, says:

I have followed the sea twenty-five years, and am now master of the bark Restless. I made a model of the steering apparatus of Stars and Stripes, which I have marked with my initials. I am not certain, from conversation which has taken place this morning, if the way the rope is fastened on the drum of the wheel is correct.

(The testimony of Captain Baker being read to the witness, he says:)

I concur in the testimony of that witness, except as regards the number of times it has happened to that witness. The ropes have jammed with me several times, but no accident has happened but once; then going up the Pamunkey river, I put my wheel hard aport to avoid a collision, and the ropes jammed, and I ran ashore before I could reverse. I should attach no blame to a seaman for that accident. I have had it happen to me, and I never punish my men for it.

No cross-examination.

W. B. SHELDON.

Sworn and subscribed this 23d day of May, A. D. 1867.

AUBREY H. SMITH,
U. S. Commissioner.

33 *Depositions for respondents, taken before Aubrey H. Smith, U. S. commissioner, May 17th, 1867.*

HOMER
vs.
THE STARS AND STRIPES.

Captain P. F. Hoxie:

I am master of the steamship Juniata, about fifteen years on the sea. Most all American steamships, with very few exceptions, have their pilot-house and wheel forward. The jamming of the tiller-ropes has often occurred to me, in my experience as a seaman. I know of no arrangement of steering apparatus, where the pilot-house is forward, by which such accident can be avoided. The jamming of the tiller-ropes occurred on board the steamer Pioneer, in rounding to at Walnut street wharf, in the year 1866; before I could clear them I came in contact with the next wharf above. I consider it safe to pass within sixty feet of a vessel at anchor in the river.

Cross-examined.

By Mr. Serrill:

The time which it takes to get the ropes clear when jammed depends upon circumstances; I have known it to take fifteen or twenty minutes. We have to reverse the wheel. By jamming I mean the bite of one rope catching another and holding it; turning the wheel back looses it.

P. F. HOXIE.

Sworn and subscribed before me this 17th day of May, A. D. 1867.

AUBREY H. SMITH,
U. S. Commissioner.

34 Captain Thomas Hand:

I have been a steamboat man for 15, 16 or 17 years; am pilot and mate of the steamer Alexander, running between here and Richmond; the pilot-house of all the coasting steamers I know of, not excepting one, is forward, and the wheel is in the pilot-house. I have had the jamming of the tiller ropes to happen too me; it has happened to me twice this year. I know of no arrangement by which the jamming of the tiller-ropes can be avoided when the pilot-house is forward. I am very careful to see that my ropes are all right before leaving the dock; sometimes the chains being too slack will kink. I consider raw hide tiller-ropes the very best that can be used; in my opinion as a seaman, the jamming of the tiller-ropes cannot be avoided sometimes. I consider it safe to go within 50 or 100 feet of a vessel at anchor; in passing her it depends upon circumstances; sometimes I go closer than I want to.

Cross-examined.

The ropes on the drum of the wheel come up one aft and the other forward on the drum; the man at the wheel sometimes can see them; if he is watching the ropes just at the time, he might prevent it probably; it is his place to watch it; if he happened to see it, and back the wheel for an instant, it would come right; a sudden motion of the wheel hard to starboard or port would be more likely to jam it than a slow and gentle motion; when the accident has happened to me, it has generally happened in executing some sudden manœuvre.

Re-examined.

It last happened to me, three weeks ago, rounding to at the wharf at Norfolk, Virginia; one of the men was at the wheel; it occurred to me also in January last, coming into the wharf at Philadelphia; I was in the pilot-house myself; the duty of the man at the wheel is to watch the ship's head and the compass, and the course which is
given him; we expect the ropes to work right except upon
35 some sudden emergency; in an emergency it would be his duty to watch his ropes; we don't expect it to happen.

To Mr. Serrill: I don't know that when a sudden manœuvre takes place it would be his duty to watch the ropes; he don't know what the trouble is at the present time; of course, the man at the wheel reports to the pilot that it is jammed; the wheelsman must stay his tack out; it is his duty to watch and report if anything is the matter with the wheel.

THOMAS HAND.

Sworn to and subscribed before me, this 17th day of May, A. D. 1867.

AUBREY H. SMITH,
U. S. Commissioner.

U. S. District Court, eastern dist. of Penn'a, in admiralty.

HOMER
vs.
THE STARS AND STRIPES.

Depositions of witnesses produced, sworn or affirmed, on part of the respondent in the above cause, before Aubrey H. Smith, United States commissioner, at his office, 137 South Fourth street, in the city of Philadelphia, on the 3d day of October, A. D. 1867.

OCTOBER 3, 1867.

Present: Mr. Henry and Mr. McMurtie, for respondents; Mr. Serrill, for the libellant.

William B. Sheldon, a witness produced on behalf of the respondents, being duly sworn, says:

I am a shipmaster of some twenty years, and have had considerable experience in the command, both of sailing vessels and steamers in the merchant and naval service. I have been
36 master of a sailing vessel for about twelve years, and of steamers for about five years. I was first lieutenant of the Flambeau and the Newbern, war vessels in the service of the United States, for about eighteen months. I afterwards commanded the gunboat Shoshokon for about seventeen months; and then commanded the Britannia till the close of the war.

I am acquainted with the accident arising from the jamming of the tiller-ropes, and the causes of the accident. I am also acquainted with the stearing apparatus of the Stars and Stripes; the model now produced is a correct one.

The model referred to is marked by the commissioner, (A. H. S., October 3, 1867.)

Question. In your own experience at sea, how often has the accident from jamming the tiller-ropes occurred in vessels rigged similarly to the Stars and Stripes?

Answer. I have known it to have occurred about six or seven times in the thirteen years that I have commanded a vessel. I mean to say that it it has occurred in vessels under my command with stearing apparatus like that of the model, some six or seven times.

I know of no precaution which will prevent the accident, except that of stationing a man by the barrel of the wheel, with his whole attention directed to the tiller-rope, ready to place his hand on the tiller-rope if the ropes should override; the man, unless very small, would interfere with the man at the wheel, by obstructing his view. I have never known that precaution to be taken, either in the merchant or the naval service. I know of no system of steering apparatus, when the wheel is forward, by which the danger can be obviated.

Q. What would be the result of so working a vessel running in the river Delaware, that no injury could possibly occur to another vessel by reason of the jamming of your tiller-ropes? I mean, could a vessel be so navigated?

A. No; they would either have to quit running under
37 steam, or other vessels would have to quit anchoring in the Delaware. The channel of the Delaware does not admit of a vessel so running as to avoid the possibility of damaging other vessels in case of the jamming of her tiller-rope. In men-of-war we have plenty of men. I have never known a man stationed near the tiller-rope to prevent jamming.

Q. Does, or does not, the jamming of the tiller-rope belong to that class of accidents which are not to be anticipated, like the fouling of an anchor-chain, or letting go, or the breaking of an apparently sound piece of timber or iron.

A. It belongs to that class of accidents; all of them are liable to occur at any time.

Cross-examined.

By Mr. Serrill:

This jamming, as I call it, is caused by the overriding of one rope upon the other; it is most liable to occur upon a sudden turn of the wheel on an emergency; it is undone by reversing the wheel, and throwing it clear again; if the jamming is seen, it may be undone by a reversal of the wheel as soon as the steersmen can turn it.

Q. In this case, represented on the model, you observe the ropes to be contiguous; if they are on opposite ends of the drum would not the liability to override be lessened?

A. I do not think it would make any difference whatever; I tried the experiment of fastening the tiller in the middle of the drum, after an accident which had occurred to me, but the same accident was repeated again in the James river with the new arrangement.

In all the other cases of accidents from jamming which I have mentioned, the ropes were rigged as in this model. I made the change on the Shoshokon. I was nearly seventeen months on her. After the accident in James river, I shifted the tiller-ropes back again to their old position; the wheel of that vessel was forward, as in the model; so also were the wheels of all the other vessels
38 in which the accidents happened. The jamming is owing to the great length of tiller-rope which has to be used when the wheel is forward, caused by the stretching of the rope. When the wheel is aft it is not so liable to happen. I have never known it to happen when the wheel was aft, as in sailing vessels. There are great advantages in steam vessels having the wheel forward. The man at the wheel has a full view.

Q. Would not a contrivance which should separate these ropes on the drum answer the purpose of preventing the jamming? Mr. Serrill calls witness' attention to a disc which he places on the drum between the ropes.

A. That contrivance might answer. I have never tried it; it looks very feasible.

The English ocean steamers are all rigged with the steering apparatus aft. Mr. Collins' line of steamers was also rigged in that way; all American steam vessels have the wheel forward.

Re-examined.

By Mr. Henry:

The method of rigging the wheel forward, as in the Stars and Stripes, is universal on American steam vessels. I have never known any contrivance for separating the tiller-ropes adopted in American steamers or any other. Mr. Serrill's idea is a novelty. I have seen grooves on the drum for the tiller-ropes to run in.

W. B. SHELDON.

Sworn to and subscribed before me this 3d day of October, A. D. 1867.

AUBREY H. SMITH,
U. S. Commissioner.

Mr. Henry offers further, on behalf of the respondents, as follows:

1. The act of the legislature of Pennsylvania, approved the 28th day of March, A. D. 1851. Pamphlet Laws, page 229, and also all other acts relating to pilot and pilotage.

2. The certificate of John Rowland, as a first-class pilot, dated the 9th January, A. D. 1867. A certified copy of the said cer-
39 tificate is produced and marked by the commissioner, (A. H. S., 2, Oct. 3, 1867.)

3. The inspector's certificate of the steamer Stars and Stripes, dated the 20th September, A. D. 1866. Marked by the commissioner, (A. H. S., 3, Oct. 3, 1867.)

AUBREY H. SMITH,
U. S. Commissioner.

Oct. 3, 1867.

Respondent also gives in evidence one certificate. Board of Wardens of Philadelphia to John Rowland, as pilot on Delaware river, prout same. Marked A. H. S., No. 4.

And afterwards, on the thirtieth day of November, A. D. 1867, Enos Whitecar and John H. Young are appointed, and being duly sworn, sit as assessors in this cause, and upon the same day the assessors having heard the evidence, are asked by the court: If, with a view to the safety of life and property, there had been due caution in the adjustment of the tiller-rope of the Stars and Stripes, and proper vigilance in the management of it, would the collision have occurred?

Each assessor answers that with an observance of proper caution the collision could not have occurred; and that he has no doubt whatever upon the question.

And afterwards, to wit, on the said thirtieth day of November, A. D. 1867, the cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged and decreed, that the libellants recover the amount of the damages sustained by them, by reason of the said collision, and that it be re-

ferred to George B. Bispham, esq., as commissioner, to ascertain and compute the amount so due, and that he make report thereof to the court.

40 In the District Court of the United States, eastern district of Penn'a, in admiralty.

Interrogatories and depositions taken under a commission on behalf of libellant to Bangor, Maine.—Returned and filed January 13th, 1868.

E. A UPTON *et al.*
vs.
THE STARS AND STRIPES.

Interrogatories for a commission on the part of the libellant to Bangor, Maine, to be exhibited to witnesses who superintended the repairs of the schooner Madonna, in 1864.

Interrogatory 1. What is your age, business and place of residence, and how long have you been engaged in such business?

Int. 2. Did you superintend the repairs or rebuilding of the schooner Madonna, in the year 1864? If yea, state where such work was done; how much of the vessel was torn out and removed, and how near to light water line. State, generally, what parts of her were rebuilt anew.

Int. 3. State, as near as you can, what proportion and how much of the cost of the repairs in 1864 was due for, or may fairly be charged to the item of labor, in tearing out and removing the old materials, and preparing the vessel for the new timbers.

Int. 4. After the old timbers and materials were removed, did you examine the bottom of the schooner? What was the condition of her bottom as regards soundness and seaworthiness?

FALLON & SERRILL,
Proctors for Libellants.

December 19, 1867.

41 Int. 5. Do you know any other matter or thing which may be of importance to the libellants? If yea, state the same as fully as if interrogated thereto.

Interrogatories to be exhibited to Captain H. H. Homer.

1. Were you master of the schooner Madonna at the time of her collision with the steamer Stars and Stripes?

2. State what steps you took to have the said schooner raised after the collision, and with whom did you consult in reference to getting said vessel raised?

Did you make a contract with E. J. Morris & Co., of Lewes, Delaware, to raise said vessel, and on whose recommendation?

Did you call on any, and what other persons, in reference to raising the vessel? If yea, state on whom you called and what took place.

3. Did you employ a watchman to watch the wreck? State fully what expenses you incurred and paid in reference to the Madonna after she was sunk, and who advanced you the necessary funds. State the items of your expenses so paid.

4. Do you know any other matter or thing which may be of importance to the libellant? If yea, state the same as fully as if interrogated thereto.

FALLON & SERRILL,
For Libellants.

Interrogatories to be exhibited to witnesses in reference to the value of the schooner Madonna.

Interrogatory 1. What is your age and business and residence? Are you acquainted with the value of vessel property, (particularly of schooners engaged in the lumber and coasting business,) in Bangor, Portland or Boston? State particularly your means of knowledge.

42 Int. 2. Did you know the schooner Madonna, owned in May last, by Mr. E. A. Upton and others, of Bangor, Maine?

Int. 3. What was her age in 1864? State, as near as you can, what was her cost per ton when originally built, and what amount (in money) of repairs was put upon her in 1864.

Int. 4. What was her fair market or selling value in May, 1867, in Bangor, Portland or Boston? State for what amount you believe she could have been sold in either of those places at that time.

FALLON & SERRILL,
Proctors for Libellants.

December 18, 1867.

Int. 5. Do you know any other matter or thing which may be of importance to the libellant? If yea, state the same as fully as if interrogated thereto.

Interrogatory to be exhibited to E. A. Upton.

Interrogatory 1. Were you one of the owners of the schooner Madonna, in 1864?

Int. 2. Have you an account of the cost of the repairs done to her in 1864? If yea, state the amount as precisely as you can from any books or vouchers in your possession or otherwise.

FALLON & SERRILL,
For Libellants.

U. S. D. C., in admiralty.

43 UPTON *et al.*
vs.
THE STARS AND STRIPES.

Cross-interrogations to be exhibited to witnesses under libellant's commission to Bangor, Maine, examined in reference to the value of the schooner Madonna.

First. Are not the selling values of vessel property affected by their age, and to what extent?

Second. Are iron-fastened vessels, whose bottoms are twenty years old and upwards, saleable, or otherwise?

Third. Was not the bottom of the schooner Madonna iron fastened; was she not built of soft wood; and whether her model was not old fashioned, or otherwise?

Fourth. Can you give the names of any vessels of the age and tonnage of the Madonna which sold, to your knowledge, in the year 1867, for a price equal to that you mention as the fair market or selling price of the schooner Madonna in May, 1867?

State the value of every such vessel, giving the tonnage, new measurement, the age and carrying capacity of every such vessel, and state whether such vessels were sold in whole or by shares.

Fifth. State the name, age, carrying capacity and tonnage, new measurement, of every vessel under one hundred and fifty tons burthen, new measurement, which you may know to have been sold at any time in 1867, at the ports mentioned in the first interrogatory.

MORTON P. HENRY,
Pro Respondent.

U. S. D. C., in admiralty.

44 UPTON *et al.*
vs.
THE STARS AND STRIPES.

Cross-interrogatories on behalf of respondent, to witnesses who superintended the repairs of the schooner Madonna in 1864.

First. Please to state whether the repairs you may mention were made by contract, or whether the same were charged for by day's work, and materials furnished. If by contract attach a copy of such contract to your answer; and if by day's work attach a copy of the bill rendered to the owners for such repairs.

Second. Before making the repairs was any estimate furnished by you to the owners of the costs of the repairs? If aye, state what your estimate was, and whether the actual cost did or did not exceed, and in what amount, the estimate made by you of the cost of such repairs. If such estimate was in writing attach the same to your answer.

Third. When the repairs were commenced did you anticipate the cost of the repairs would be as great as they actually were?

Fourth. Were not the cost of the repairs to the Madonna increased by discovering, from time to time as the work progressed, the rotteness of the vessel? Was not her hull rotten and unsound to an extent not anticipated at the time the repairs were commenced?

MORTON P. HENRY,
Pro Respondent.

Deposition of witnesses produced and sworn, and examined on this fourth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph Carr, a commissioner of the Circuit Court of the United States, for the Maine district, in the city of Bangor, in the State of Maine, by
45 virtue of a commission issuing from the District Court of the United States for the eastern district of Pennsylvania, to Joseph Carr, directed for the examination of witnesses in a certain cause depending in said court, wherein E. A. Upton et al. are libellants, and the steamer Stars and Stripes is respondent.

Joseph Oakes, of the city of Bangor, in the State of Maine, aged forty years or thereabouts, being produced, sworn and examined on behalf of the plaintiff, deposeth as follows:

1. To the first interrogatory, on the part of the plaintiff, he answers as follows:

Answer. I am fifty-two years of age. My business is that of ship building and repairing. I reside in Bangor, Maine. I have been engaged in the business thirty years.

2. To the second interrogatory, on the part of the plaintiff, he answers as follows:

A. I did superintend the repairs on the Madonna, in the year 1864. The work was done at South Orrington, Maine. The ceiling was all taken out and part of the keelson; on further reflection I think all the keelson was taken out; all the timber aft was new to new the pumps; the stern ports and stern hull were new, and all the timbers were removed that were in any way defective; about all above the light water lines were new; the stern was all new except a few plank outboards. Her bow was taken down to light water line, or below; new ceiling and bilge streaks were put in; the bottom outside was refastened and recaulked, and all plank taken out that was necessary. She was trunneled through with white oak and locust trunnels clear through and wedged on the inside. The condition of the bottom was good and as perfect as a bottom of that kind could be made. It was perfectly sea-worthy in my opinion. The original bottom was copper and composition fastening. One new mast was put in at the time of the above repairs, and there was one
46 new mast put in the year before. All the spars and iron work about the spars were made good. The top was just as good as our new vessels. There were a few old beams used, but they were perfectly good.

3. To the third interrogatory, on the part of the plaintiff, he answers as follows:

A. It is difficult to state exactly, but in my best judgment the item of labor in tearing out the old materials and preparing the vessel for the new timbers would not exceed two hundred or two hundred and fifty dollars.

4. To the fourth interrogatory, on the part of the plaintiff, he answers as follows:

A. I have answered this interrogatory in my answer above to interrogatory number two. (2).

5. To the fifth interrogatory, on the part of the plaintiff, he answers as follows:

A. I have been in the practice of buying interests in old vessels, with intent to repair them, and have repaired them, and feel myself confident to judge of their value before and after repairs were made. I made a careful examination of the Madonna before the repairs were made in 1864. I had made repairs on her one or two years previous and knew pretty well what her condition was. To the best of my judgment she was worth, before the repairs were made in 1864, from twenty-five hundred to three thousand dollars. My bill for repairs on the Madonna, for services and paid labor and materials furnished, amounted to two thousand and ninety-six dollars and seventy cents, ($2,096 70;) this amount does not include a large amount for labor and materials put on said vessel, which were paid for by the vessel's agent, Mr. E. A. Upton. The last time that I ever saw the Madonna was at Bangor, in November, 1866. At that time she was in a good state of repairs; in my judgment she was worth and would have sold for over nine thousand dollars in this market. I owned the
47 schooner Atlantic at that time; she was an old vessel and had been repaired. I was offered and refused six thousand dollars for her cash down. The Madonna was one hundred and forty-six tons, old measurement. The Atlantic was one hundred and ten tons, old measurement. The Atlantic was an inferior vessel to the Madonna. In my opinion the Madonna was better worth nine thousand dollars at that time than the Atlantic was worth six thousand dollars.

Cross-interrogations on behalf of respondent to witnesses who superintended the repairs of the schooner Madonna in 1864:

Cross-interrogatory 1. To the first cross-interrogatory on the part of the respondents he answers as follows:

Answer. They were charged by day's work and materials furnished. I herewith attach a copy of the bill rendered by me to the agent for such repairs, marked A.

Cross-inter. 2. To the second cross-interrogatory on behalf of the respondents he answers as follows:

A. I think there was no estimate furnished by me of the cost of repairs.

Cross-inter. 3. To the third cross-interrogatory on behalf of respondents he answers as follows:

A. When the repairs were commenced, I did not anticipate they would be as great as they actually were.

Cross-inter. 4. To the fourth cross-interrogatory on behalf of the respondents he answers as follows:

A. The instructions from the owners were to thoroughly overhaul and repair the Madonna. Most, if not all of the rotton or decayed parts were taken out of her before we began the repairs. I do not think the cost of the repairs were much, if any, increased, by discovering any rottenness as the work progressed. Her hull was not more rotten than was anticipated before the repairs commenced.

After hearing the above read to me, and on further reflection,
48 I recollect a bill of eighty dollars and thirty-eight cents, not included in the bill annexed above, and which was overlooked by me, but which was paid me by the owners of the Madonna, of which I herewith annex a copy, marked D.

JOSEPH OAKES.

Deponent's fees.

Travel	10
Att. two days	$3 00
	$3 10

JOSEPH CARR,
Commissioner.

D.

This is the paper referred to by Joseph Oakes, marked D, schooner Madonna.

To Oakes & Doane.	Dr.
Jan'y 9th. To 11 days, Moes Rich	$30 25
" 11¼ " caulking	50 13
	$80 38

Brewer, August 1st, 1864.
Rec'd payment,

OAKES & DOANE.

JOSEPH OAKES.

UNITED STATES OF AMERICA, *Maine District:*

I, Joseph Carr, a commissioner appointed by the District Court of the United States for the eastern district of Pennsylvania, to take the depositions of witnesses in a certain cause civil and maritime, depending in said court, wherein A. E. Upton et als., libellants, and the steamer Stars and Stripes is respondent, do hereby certify that

the foregoing deposition was taken by request of the libellants, and the reason for taking the same is, that the testimony of said witness is alleged to be material and necessary in the cause pending,
49 and that said witness lives at a greater distance from the place of trial than one hundred miles. I further certify that I caused to be, and personally appeared before me at my office, in the city of Bangor, Maine, the said witness, Joseph Oakes, on the fourth day of January, A. D. 1868, who was of lawful age, and said witness was carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me in the presence of said witness, and was afterwards subscribed by him in my presence. The agent of the libellants was notified and was present.

In testimony whereof I have hereunto set my hand and seal this fourth day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.]

JOSEPH CARR,
Commissioner.

This is the paper referred to by the witness, Joseph Oakes, in the testimony, marked A.

JOSEPH CARR,
Commissioner.

Schooner Madonna and owners to Oakes & Doane:

				DR.
January	To 1,590 lbs. iron, 6–8 5½	$89	45	
	780 lbs. iron, 5¼	40	95	
	400 lbs spikes, 7½	30	00	
	600 lbs. ½-inch spikes	42	00	
	1 augur and crank	1	00	
	36 quarts augur	7	20	
	1,056 treenails	8	40	
	200 plank wedges	6	00	
50 January	To 346 lbs. refined iron	$20	76	
	4 lbs. chalk		12	
	paid hauling boards		75	
30.	horse and sleigh	2	50	
	J. Paine to Mill creek	2	50	$249 65
Feb'y 6.	horse and sleigh, self, 2	.....		5 00
	horse and sleigh, self, 2	2	00	
	300 treenails	1	80	
	Plugs and treenails, wedges	6	40	
	1 stem knee	5	00	
	7½ quarts augur	1	50	
9.	horse and sleigh	2	00	
	stove pipe	2	50	
13.	550 lbs. refined iron	38	50	
	25 lbs. ⅝ iron	2	00	

		To 18 lbs. ½ iron	$1 35	
		200 spikes	15 00	
		400 18-inch treenails	6 00	
		horse and sleigh	2 00	$86 07
		balance McPherson's bill	.....	9 78
		Kent's bill for knees	14 50	
		355 deck plank	17 75	
		587 ft. spruce planed plank	9 09	
		cash paid E. S. Newman	30 00	
		cash paid I. West	38 50	
		horse and sleigh	2 00	
	20.	knees at Hollyoh & Baker's	51 49	
		planing same	2 80	
		1 18-inch pinchers	38 00	
		670 lbs. iron	40 20	
		65 lbs. clinch rings	10 83	
		Raiden, 2 trips Mill creek	9 00	264 16
		trucking to Bangor	.....	78
		3 bushels salt	2 10	
		paid Shackley for trucking	50	
		1 barrel pitch	6 00	
51	Feb'y .	To 200 lbs. oakum	$26 00	
		horse and wagon, work around.	1 50	
March	.	221 feet Norway pins	63	
		600 18-inch treenails	8 00	
	15.	Raiden to Mill Creek	4 50	
		600 treenails	6 00	
		paid Davis's board	5 50	
		27 inch knees	.....	$72 73
		Raiden to Mill Creek	4 50	
		2 spears	1 90	
		8 7-inch planed knees	24 00	
		25 lbs. spikes	2 00	
		22 lbs. bolts	1 98	
		22 lbs. cap strap	2 75	
		9 hours' labor on H.	2 70	
		6,151 feet spruce deck plank	110 70	
		50 lbs. oakum	6 50	
		Almby's bill	8 06	
		1 quart oil	29	
		trucking cap	50	
		Murry's bill for cap	21 29	
		bill of iron and rivets	5 26	
		nails and paper, house-top	8 53	200 97
		200 lbs. oakum	.....	26 00
		100 lbs. white lead	13 00	
		12 galls. porgy oil	15 60	
		25 lbs. green	5 00	
		1 lb. lamp black	20	
		60 feet pine plank	3 00	

		To tacks and screws	$ 75	
		140 lbs. iron	9 00	
		pattern Mill Creek	2 00	
		23 lbs. nails	1 73	
		5 galls. porgy oil	6 50	
	April 22.	horse and wagon to creek	1 50	
		Raiden, wagon to creek	3 50	
	52	Patten	2 00	
		50 lbs. nails	4 50	$69 08
		100 lbs. white lead	.....	10 00
		1 paint brush	83	
		4 6-inch knees	6 00	
		50 lbs. oakum	6 50	
		40 lbs. galvanized nails	6 00	
		paid Dan's board	9 50	
		30½ days spar making	76 25	
		1 7-inch knee for top	2 75	
		293 feet white oak	26 37	
		2 lbs. nails	16	
		iron jackstay	50	
		33 feet pine boards	1 32	
		100 lbs. spikes	8 00	144 18
		Raiden, Mill Creek	.....	4 50
		38 lbs. refined iron	2 66	
		1 paint brush	1 17	
		1 lb. yellow ochre	48	
		2 galls. naphtha	1 50	
		1 Japan	1 50	
		treenails, wedges and plugs	1 50	
		paid for glass	20	
		100 feet deck plank	4 00	
		160 locust treenails	6 40	
		50 white oak	1 00	
		250 beach	3 50	
				23 90
		Amount carried forward	.....	$1,166 75
		Amount brought forward	.....	$1,166 75
		chocks	2 68	
		3½ dozen screws	30	
		1 seam brush	25	
		98 lbs. refined iron	5 84	
		100 lbs. small spikes	8 50	
	53	April 25. To pattern Mill Creek	$2 25	
		6½ galls. boiled oil	11 38	
		1 Japan	1 50	
		100 white lead	13 00	
		4 galls. porgy oil	5 20	
		15 lbs. putty	1 05	

	To horse and wagon		$1 75	
	1 gross schrurs		60	
	8½ lbs. hatch nails		1 06	$55 36
	wheel, posts and getting		.....	4 34
	bill cabin fixings		13 22	
	Venetian red		20	
	vermillion red		20	
	Brunswick green		2 40	
	finishing nails		1 20	
	25 sheets sand paper		25	
	4½ galls. pogy oil		5 85	
	14 lbs. putty		1 22	
	1 scraper		75	
	sockets for wheel-post		30	
	7 dozen brass screws		58	
	6 galls. boiled oil		10 50	36 69
	1½ naphtha		.....	95
	1 gall. Japan		1 50	
	10 ⅜ iron		1 00	
	paid A. C. Stubbs' bill		25 62	
	4 pair butts		60	
	4 dozen screws		40	
	1 brass bolt		40	
	5 brass buttons		50	
	5 flush rings		1 00	
	8 hooks and staples		1 60	
	2 mortice locks		1 35	
	paid Fletcher's bill		3 75	
May 5.	trucking		50	
	1 sheet line		1 17	
54 May 5.	To trucking stove, &c.		$ 75	
	5 8-10 day's carp. work		18 85	
	6 6-10 " " "		21 45	$80 46
	repairing barrel		.....	20
	staples for sheet		30	
	repairing staples		30	
	20 lbs. spikes		1 80	
	hooks and thimbles		75	
	nails		50	
	5¾ lbs. bolts		52	
	cutting 87 lbs. bolts		1 75	
	61 lbs. pump standards		9 92	
	repairing staples		50	
				16 34
	Amount carried forward		.....	$1,373 17
	Amount brought forward		.....	$1,373 17
May 7.	18 lbs. hatch lining		2 25	
	21 nails		30	
	1½ lbs. bolts		14	
	1 lb. composition nails		20	

		To Moses Rich's bill	$50 87		
		2 dozen screws	83		
		trucking	50		
		44 feet hard wood	1 32		
		40 feet spruce	1 00		
		87 plugs	15		
		75 treenails	75		
		2 lbs. composition nails	67		
		1½ dozen screws	18		
	7.	9½ days' carp. work	30 88		
		21 lbs. forelocks	3 50		93 54
		19 lbs. spikes	.....		1 70
		8 lbs. bolts	72		
		10 lbs. hatch nails	1 20		
		25 lbs. plates	3 13		
55	May 7.	To 1 ⅜ iron	$ 10		
		hatch rings	50		
		screw bolts	80		
		4 rudder brace brads	50		
		repairing chain	40		
		1½ lbs. bolts	14		
		19 lbs. hatch bar	2 38		
		16 guard stern mouldings	2 00		
		7 dozen screws	70		
		4 papers copper tacks	20		$15 57
	9.	5 9-10 days' carp. work	.....		19 18
		25 feet hard wood	50		
		1 lb. comp. nails	40		
	12.	5½ hours labor	1 90		
		150 lbs. spruce oakum	30 00		
		⅓ bbl. pitch	2 00		
		6 days' caulking at creek	12 00		
		1 " " "	3 00		
		1 lb. wrought nails	15		
		7 bolts for rail	70		
		4 links	32		
		2 staples for pump	37		
		½ lb. hook	10		
		A. Leighton's bill	40 24		
		1 water closet	21 00		
		hatch irons	4 80		
		114 days' joinerwork	229 00		
		4½ lbs. paint	1 13		
		composition hook, staples	1 60		
		Penkin's bill for knees	21 50		
		Clark's bill hauling to creek	14 00		
		390 feet spruce plank house-top	7 02		
		caulking ports	1 50		
					393 23
		Amount carried forward	.....		$1,896 40

		Amount brought forward	.....	$1,896 40
56	May 12.	211 feet No. 3 pine boards	$84 44	
		930 feet No. 2 pine boards, 5	46 50	
		glass and putty cabin windows	1 00	
	13.	1 day's carp. work	3 25	
		6½ lbs. scotchman	1 17	
		eyed bolts with screws	25	
		8½ fine hatch bar	1 06	
		22½ lbs. pump spear	3 83	
		12 lbs. davy block strap	2 04	
		7 staples for gaft	87	
		2½ check bolts	32	
		2¼ ring bolts	37	
		6½ quart new augur	1 90	
		350 treenails	2 60	149 60
		paid Baiston for Carter Ward	.....	10
		14 lbs. iron wedges	1 87	
		1 quire sand paper	33	
		2 brass screws	30	
		2 iron "	20	
		Pope's bill for printing	.....	
		Leavy bill	32 00	
		10 lbs. green paint	3 00	
		use of yard tools	3 00	
			——	37 70
				$2,096 70

Supra Cr.

1864.	By amounts as per specified on back side this sheet		76 65
May 30.	Cash		935 18
	Cash to bal.		1,084 87
			$2,096 70

BANGOR, 30*th May*, 1864.

Settled the above bill and received pay in full of E. A. Upton.

OAKES & DOANE.

57 A.

May 9. *Contra Cr.*

By mistake	$4 50	
1 augur	1 90	
350 treenails	2 60	
39¾ lbs. spikes	2 78	
100 old iron, 2¾c.	2 75	
31 lb. iron, 7c.	2 17	
19 lb. iron, 7c.	1 33	

	By 335 lb. iron	$23 45	
	50 lbs. oakum at creek	6 50	
	700 feet spruce	10 50	
			$58 48
	boards from Bowden	.....	
	21 clinch pins	.....	3 50
	84 lbs. bolts old iron, windlass purchased	.....	2 52
	400 lbs. windlass purchased, 1¾	7 00	
May 7.	mistake in fur locks	3 50	
	treenails	75	
	30 locust	90	
			12 15
			$76 65

JOSEPH OAKES.

Deposition of Enoch S. Newman, a witness produced, sworn and examined this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph Carr, in the city of Bangor, and State of Maine, by virtue of a commission issuing from the District Court of the United States for the eastern district of Pennsylvania, to Joseph Carr directed, for the examination of witnesses in a certain cause depending in said court, wherein E. A. Upton & Co. are libellants, and the steamer Stars and Stripes is respondent.

Enoch H. Newman, of Bucksport, Maine, aged fifty years, or thereabouts, being produced, sworn and examined on behalf of the plaintiffs, deposeth as follows:

58 1. To the first interrogatory on the part of the plaintiff he answers as follows:

Answer. I am fifty-two years of age. I am a ship-carpenter by occupation. I reside in Orland, Maine. I have been engaged in the business of ship cooper thirty-six years. I have been master builder twenty-one years. I have superintended the building of about forty-two sail of vessel.

2. To the second interrogatory on the part of the plaintiff he answers as follows:

A. I did superintend the repairs on the "Madonna," in 1864; I had charge of the crew of men; the work was done at Orrington, at a place called Mill Creek; she was all torn out down to light water-line, with the exception of a few fatlocks, which I considered as good as new; she was all torn out down to the keel aft of the pumps; she had new transoms, new stern, and new deadwood, and a new keelson; she had all new ceiling and bilge streaks; she had all new deck frames, except two or three beams which had been put in a year or two before, and which I considered as good as new; she was also all taken down forward to light water-line, and in some parts below; she

had a new main stem put in, and a new cutwater; her cutboard plank was new down to light water-line; her top was all entirely new, same as a new vessel; she was trunnelled all through with locust and white oak—trunnels wedged outside and inside; she was what we call a copper and composition-fastened vessel; her spars were principally new.

3. To third interrogatory on the part of the plaintiff he answered as follows:

A. In my judgment the cost of the labor in tearing out and removing the old materials, and getting the vessel ready for the new timbers, would not exceed two hundred and fifty dollars.

4. To the fourth interrogatory on the part of the plaintiff he answered as follows:

59 A. I did make an examination of the bottom of the schooner after the old materials had been taken out, and found it sound and good; we refastened the bottom all over.

5. To the fifth interrogatory on the part of the plaintiff he answered as follows:

A. I do not know that I can state anything further, unless it is that she was thoroughly repaired, and was in every way worthy and about as good as a new vessel.

Cross-interrogation on behalf of the respondent to the above witness to valuing the repairs on the Madonna in 1864:

Cross-inter. 1. To the first cross-interrogatory of the respondent he answers as follows:

A. The labor that I did was done by the day; all the labor was done by day's works. I herewith annex a copy of the bill rendered to the owners for the labor and repairs, marked C.

Cross-inter. 2. To the second cross-interrogatory on the part of the respondent he answered as follows:

A. I do not think I made any estimate on the repairs; no estimate was made.

Cross-inter. 3. To the third cross-interrogatory on the part of the respondent he answered as follows:

A. We did not think they would be quite so large.

Cross-inter. 4. To the fourth cross-interrogatory on the part of the respondent he answers as follows:

A. I don't know that they were increased any; we tore her down and then went to work to build her up.

Direct interrogatories on the part of the libellants touching the value of the Madonna:

1. To the first interrogatory on the part of the libellants he answered as follows:

A. I am acquainted with the value of vessel property and of schooners engaged in the lumber and coasting business at the
60 places named, but more especially at Bangor. I have been owner and interested in vessels engaged in that business.

2. To the second interrogatory on the part of the libellants he answers as follows:

A. I did know the schooner "Madonna."

3. To the third interrogatory on the part of the libellants he answers as follows:

A. The Madonna was about seventeen years old in 1864. She would cost about fifty-five dollars per ton at the time she was built, old tonnage. I could tell what amount of repairs were put upon her in 1864.

4. To the fourth interrogatory on the part of the respondent he answers as follows:

A. I do not know exactly; but in my opinion, and I believe that she could have been sold at either of said places, for between eight or nine thousand dollars.

Cross-interrogations on the part of the respondent:

Cross-inter 1. To the first cross-interrogatory on the part of the respondent he answers as follows:

A. They are affected by their age, but to what extent I could not say; it would depend very much on their condition and the care taken of them.

Cross-inter. 2. To the second cross-interrogatory on the part of the respondent he answers as follows:

A. Some are, and some are not.

Cross-int. 3. To the third cross-interrogatory on the part of the respondent he answers as follows:

A. She had some iron in her bottom, but she was refastened with composition; she had no soft wood in her bottom. She formerly had a jumper top. I should call her a very good model. It was some years ago that she was modeled; she was not an old-fashioned model.

61 Cross-inter 4. To the fourth cross-interrogatory on the part of the respondent he answers as follows:

A. I do not now recollect of any sales of vessels of her class.

Cross-inter. 5. To the fifth cross-interrogatory on the part of the respondent he answers as follows:

A. I do not know of any; I cannot mention any.

ENOCH S. NEWMAN.

Deponent's fees.

Travel, 40 miles	$2 00
Att., one day	1 50
	$3 50

JOSEPH CARR,
Commissioner.

UNITED STATES OF AMERICA, *Maine District:*

I, Joseph Carr, a commissioner appointed by the District Court of the United States for the eastern district of Pennsylvania, to take the depositions of witnesses in a certain cause, civil and maratime, depending in said court, wherein E. A. Upton & Co. are libellants, and the steamer Stars and Stripes is respondent, do hereby certify that the foregoing deposition was taken by request of the libellants, and the reason for taking the same is that the testimony of said witness is alleged to be material and necessary in the said cause pending, and that said witness was at a greater distance from the place of trial than one hundred miles. I further certify that I caused to be and personally appeared before me, at my office, in the city of Bangor, Maine, the said witness, Enoch S. Newman, on the 8th day of January, A. D. 1868, who was of lawful age, and said witness was carefully examined, cautioned and sworn by me, without fear or favor by either party, to testify the truth, the whole truth and nothing
62 but the truth, that said deposition was reduced to writing by me in the presence of said witness, and afterward subscribed by him in my presence. The agent of the libellant was notified and was present.

In testimony whereof I have hereunto set my hand and seal this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] JOSEPH CARR,
Commissioner.

This is the paper, exhibit or document referred to by E. S. Newman in his examination as the paper marked C.

JOSEPH CARR,
Commissioner.

Bills paid by E. S. Newman on schooner Madonna.

E. Soplin	$137 81
N. Scott	113 53
John Grend	145 50
Jesse Grueden	155 25
Edward Loude	113 75
Frank Doe	145 00
J. C. Rollins	109 88
Amos Rocks	96 50
John Benton	58 50
A. B. Carter	20 00
John Nickerson	39 00
J. C	130 00
M. Brown	34 37
63 Charles Brown	25 75
A	10 00
George Godfrey	5 00

John West	$8 83
Isaac Barton	3 75
Richard Hobin, filing saws	66
Albert Cobb, for painting	31
Thomas Bunton, for	11 50
	25
Moses Rich	77 00
E. Durn	8 00
William H. Wheeler	1 50
For making jack screw	2 00
	1 17
	$1,457 81
E. S. Newman's wages, 72½ days, at $3 00	217 50
	$1,675 31
Amount received by Master Newman, of E. A. Upton and A. P. Veazie, at various times for receipts	1,570 00
Bal	$105 31

BANGOR, 21, 1864.

Received of E. A. Upton one hundred and five dollars, in full, for ballance above bill.

E. S. NEWMAN.

$1,540 00 of E. A. U. & Co.
30 00 of Oakes & Doane, and charged in their bill.

$1,570 00

Deposition of Hiram H. Homer, a witness produced, sworn and examined this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph Carr, in the city of Bangor, and State of Maine, by virtue of a commission issuing from the District Court of the United States for the
64 eastern district of Pennsylvania, to Joseph Carr, directed for the examination of witnesses in a certain cause depending in said court, wherein E. A. Upton et al. are libellants, and the steamer Stars and Stripes is respondent.

Hiram H. Homer, of Bucksport, Maine, aged thirty-five years, or thereabout, being produced, sworn and examined, on the part of the libellants, deposeth as follows:

1. To the first interrogatory, on the part of the plaintiff, he answers as follows:

Answer. I was master of the schooner Madonna at the time of the collision with the steamer Stars and Stripes.

2. To the second interrogatory, on the part of the plaintiff, he answers as follows:

A. I advertised the vessel in the first place for some one to raise her. Messrs. J. E. Baisley, at Philadelphia, were my merchants; I consulted with them, and they referred me to E. J. Morris & Co., of Lewes. Baisley & Co. stated that Morris & Co. were the best persons they knew anywhere around that I could get to raise the vessel; one of the firm of Morris & Co. was then in Philadelphia, and I made a contract, in writing, with him that their firm should raise the vessel at fifty per cent. on what she should be valued at when delivered by them in Philadelphia. They went to the Madonna with a vessel and diver, and they got some beef from off the deck, and then they came to the city and reported that the vessel could not be got up. After I received the report of Morris & Co., I called on Watson & Son, and asked them if they could refer me to any parties who could raise the schooner, I having understood that they had said she could be raised for fifteen or twenty hundred dollars. They referred me to Messrs. Carter, Vaughan, Peterson and Howe. I called on all the parties named, and they would not undertake the job. The names
65 of the above parties were each given to me on a card by Watson, and I think I give their names correct. They were four distinct establishments, and not, to my knowledge, connected in business.

3. To the third interrogatory, on the part of the plaintiff:

A. I did employ two watchmen at the wreck, day and night. The expenses incurred by me in reference to the Madonna, after she was sunk, including my own time and expenses, and board, were five hundred seventy-seven dollars and twenty-nine cents. This amount was advanced to me by Mr. Baisley, less the amount of twenty-five dollars for a small boat, which I sold, that belonged to the Madonna. I herewith annex a copy of the items of expenses, marked B.

4. To the fourth interrogatory, on the part of the plaintiff, he answers as follows:

A. After I had applied to the parties named above, to whom Messrs. Watson & Son referred me, and was unable to obtain from them any proposition, I had an application in response to an advertisement from a New York wrecking company, and contracted with them for seventy-five per cent. of the value of the vessel, delivered at Philadelphia, but some two weeks or more after the contract they abandoned all endeavor to raise her as useless. I wish to correct a statement in my answer to the second interrogatory. I have stated that I called on all the parties, meaning Carter, Vaughan, Peterson and Homer. I now wish to state that I did not see Mr. Carter, but I called at his house, and was there informed that Mr. Carter was over at West Philadelphia, and that he had sold his apparatus and did not do any wrecking business, and this was the reason that I did not look for him. I had been master of the Madonna about eighteen months, and had carried various kinds of cargo in her, such as sugar and corn; I always found her a good sea-going vessel, and did not find any fault in her; she was a good model, and worked and sailed well.

HIRAM H. HOMER.

66 *Deponent's fees.*

Travel, 36 miles	1 80
Att., one day	1 50
	$3 50

JOSEPH CARR,
Commissioner.

UNITED STATES OF AMERICA, *Maine District:*

I, Joseph Carr, a commissioner appointed by the District Court of the United States, for the eastern district of Pennsylvania, to take the depositions of witnesses in a certain cause, civil and maratime, depending in said court, wherein E. A. Upton et al. are libellants, and the steamer Stars and Stripes is respondent, do hereby certify that the foregoing deposition was taken by request of the libellant, and the reason for taking the same is, that the testimony of said witness is alleged to be material and necessary in the cause pending, and that said witness lives at a greater distance from the place of trial than one hundred miles.

I further certify that I caused to be, and personally to appear before me, at my office, in the city of Bangor, Maine, the said witness, Hiram H. Homer, on the eighth day of January, A. D. 1868, who was of lawful age, and said witness was carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me, in the presence of said witness, and subscribed by him, in my presence. The agent of the libellants was notified, and was present.

In testimony whereof I have hereunto set my hand and seal, this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] JOSEPH CARR, *Commissioner.*

67 This is the paper referred to by H. H. Homer, marked B.
JOSEPH CARR,
Commissioner.

Schooner Madonna and owners,

1867.	To H. H. Homer,	Dr.
Jan'y 24.	To paid for watching schooner after she was run down, per bill	$173 87
	Paid steam tow-boat to go down and get sails, &c.	110 00
	Paid my private expenses going down to vessel and back three times	14 00
	Paid truckage on sails	1 50
	Paid freight on small boat	3 00
	Paid telegrams	3 58

Paid for advertisements	$11 95
Paid for protest	11 80
Amount paid for my board and my time while detained in Philadelphia attending to the business	247 63
	577 29

Cr.

By amount received for small boat sold	25 00
Cash of J. E. Baisley & Co. at various times for their account rendered	$552 29

Deposition of Isaac Dunning, a witness produced, sworn and examined, this seventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph Carr, in the city of Bangor, and State of Maine, by virtue of a commission issuing from the District Court of the United States for the eastern district of Pennsylvania, to Joseph Carr directed, for the examination of witnesses in a certain cause depending in said court, wherein E. A. Upton et al. are libellants, and the steamer Stars and Stripes is respondent.

68 Isaac Dunning, of Brever, in the State of Maine, aged sixty years, or thereabouts, being produced, sworn and examined, on behalf of the plaintiff, deposeth as follows:

1. To the first interrogatory, on the part of the plaintiff, he answers as follows:

Answer. I am sixty years of age; I reside in Brever now, but have lived most of my life in Bangor; I am acquainted with vessel property; I have been engaged in building and repairing vessels from fourteen years of age to the present time.

2. To the second interrogatory, on the part of the plaintiff, he answers as follows:

A. I did know the schooner Madonna; I have known her ever since she was built.

3. To the third interrogatory, on the part of the plaintiff, he answers as follows:

A. I do not remember exactly, but she was as much as fifteen years old in 1864. I think she would cost, when she was built originally, about fifty-five dollars a ton; I do not know the amount of repairs that was put upon her in 1864, but judging from my knowledge of the vessel and the cost of repairs at that time, I should say not far from six or seven thousand dollars.

4. To the fourth interrogatory, on the part of the plaintiff, he answers as follows:

A. In my opinion, her fair market value, at either of the places named, would not have been less than nine thousand dollars; I think she would have sold for that sum.

5. To the fifth interrogatory, on the part of the plaintiff, he answers as follows:

A. The Madonna was a composition fastened vessel. Before the Madonna was repaired in 1864, she was worth and would have sold, in 1864, in my opinion, for twenty-five hundred or three thousand dollars; I saw her soon after she was repaired; she was made as good as new; she was thoroughly repaired, and would have
69 sold at that time for the sum stated above, and the cost of repairs; I had an opportunity and made an examination of her at the time; I have built eighty vessels, large and small, ships, barges, steamers and schooners, and have been very largely engaged in repairing vessels, so that I deem myself fully competent to judge of the value and costs of vessels and repairs.

Cross-inter. 1. To the first cross-interrogtory, on the part of the respondent, he answers as follows:

A. They are.

Cross-inter. 2. To the second cross-interrogatory, on the part of the respondent, he answers as follows:

A. They are saleable.

Cross-inter. 3. To the third cross-interrogatory, on the part of the respondent, he answers as follows:

A. I cannot say whether her keel was iron or copper, but her bottom was composition fastening; she was not built of soft wood; her bottom was built of hard wood; it was a first-rate model, but when she was repaired the top was somewhat changed; I could not state that her model was old fashioned; she was a fine sailing and working vessel.

Cross-inter. 4. To the fourth cross-interrogatory, on the part of the respondent, he answers as follows:

A. I do not now recollect of any.

Cross-inter. 5. To the fifth cross-interrogatory, on the part of the respondent, he answers as follows:

A. I have already stated that I do not recollect of any.

ISAAC DUNNING.

Deponent's fees.

Travel	10
Att. one day	1 50
	$1 60

JOSEPH CARR,
Commissioner.

70 UNITED STATES OF AMERICA, *Maine District*:

I, Joseph Carr, a commissioner appointed by the District Court of the United States for the eastern district of Pennsylvania, to take the depositions of witnesses in a certain cause, civil and maratime, depending in said court, wherein E. A. Upton et al. are libellants,

and the steamer Stars and Stripes is respondent, do hereby certify that the foregoing deposition was taken by request of the libellants, and the reason for taking the same is that the testimony of said witness is alleged to be material and necessary in the cause pending, and that said witness lives at a greater distance from the place of trial than one hundred miles.

I further certify that I caused to be and personally to appear before me, at my office, in the city of Bangor, Maine, the said witness, Isaac Dunning, on the seventh day of January, A. D. 1868, who was of lawful age, and said witness was carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me in the presence of said witness, and was afterwards subscribed by him in my presence; the agent of the libellants was notified and was present.

In testimony whereof I have hereunto set my hand and seal, this seventh day of January, in the year of our Lord one thousand eight hundred and sixty eight.

[SEAL.] JOSEPH CARR,
Commissioner.

Deposition of Elias A. Upton, a witness produced, sworn and examined, this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph
71 Carr, in the city of Bangor, and State of Maine. by virtue of a commission from the District Court of the United States for the eastern district of Pennsylvania, to Joseph Carr directed, for the examination of witnesses in a certain cause, depending in said court, wherein E. A. Upton et al. are libellants and the steamer Stars and Stripes is respondent.

Elias A. Upton, of Bangor Maine, a witness produced, sworn and examined on the part of the libellants, deposeth as follows:

1. To the first interrogatory on the part of the libellants, he answers as follows:

A. I was one of the owners and also agent for the Madonna, in 1864.

2. To the second interrogatory on the part of the libellants he answers as follows:

A. I have an account, I opened a separate account, on my books with the Madonna, so that I might know what the exact cost of repairs were. From that account on my books, the machine for which I have on file, it appears that the amount of repairs paid by me was fifty-seven hundred and five dollars and sixty-eight cents. This repair account, when all the bills were in and paid, was made up, and the amount transferred on my books to the general account of the Madonna.

E. A. UPTON.

Deponent's fees.

Travel	10
Att. one day	1 50
	$1 60

JOSEPH CARR, *Commissioner.*

72 UNITED STATES OF AMERICA, *Maine Distrtct:*

I, Joseph Carr, a commissioner, appointed by the District Court of the United States for the eastern district of Pennsylvania, to take the depositions of witnesses in a cause, civil and maratime, depending in said court, wherein E. A. Upton et al. are libellants, and the steamer "Stars and Stripes" is respondent, do hereby certify that the foregoing deposition was taken by request of the libellant, and the reason for taking the same is, that the testimony of said witness is alleged to be material and necessary in the cause pending, and that said witness lives at a greater distance from the place of trial than one hundred miles. I further certify that I caused to be and personally to appear before me, at my office, in the city of Bangor, Maine, the said witness, Elias A. Upton, on the eighth day of January, A. D. 1868, who was of lawful age, and said witness was by me carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me, in the presence of said witness, and was afterwards subscribed by him in my presence. The agent of the libellant was notified, and was present.

In testimony whereof I have hereunto set my hand and seal this ninth day of January, in the year of our Lord one thousand eight hundred sixty-eight.

[SEAL.] JOSEPH CARR, *Commissioner.*

73 Whereupon afterwards, to wit, on the 27th day of March, A. D. 1868, the said commissioner, George T. Bispham, esq., makes and files his report, with the exceptions on the part of the libellant to the said report attached, and his additional report upon said exceptions, and the same being read, are in the words and figures following, to wit:

In the United States District Court for the eastern district of Pennsylvania.

ELIAS A. UPTON *et al.* *vs.* THE STARS AND STRIPES. } In Admiralty. (Collision.)

The commissioner appointed to assess damages in the above cause respectfully report as folllows:

Meetings were held at the office of the commissioner, No. 524 Walnut street, in the city of Philadelphia, on December 4th, 1867, and continued from time to time by adjournment, until March 6th, 1868.

and the steamer Stars and Stripes is respondent, do hereby certify that the foregoing deposition was taken by request of the libellants, and the reason for taking the same is that the testimony of said witness is alleged to be material and necessary in the cause pending, and that said witness lives at a greater distance from the place of trial than one hundred miles.

I further certify that I caused to be and personally to appear before me, at my office, in the city of Bangor, Maine, the said witness, Isaac Dunning, on the seventh day of January, A. D. 1868, who was of lawful age, and said witness was carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me in the presence of said witness, and was afterwards subscribed by him in my presence; the agent of the libellants was notified and was present.

In testimony whereof I have hereunto set my hand and seal, this seventh day of January, in the year of our Lord one thousand eight hundred and sixty eight.

[SEAL.] JOSEPH CARR,
Commissioner.

Deposition of Elias A. Upton, a witness produced, sworn and examined, this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, at the office of Joseph
71 Carr, in the city of Bangor, and State of Maine, by virtue of a commission from the District Court of the United States for the eastern district of Pennsylvania, to Joseph Carr directed, for the examination of witnesses in a certain cause, depending in said court, wherein E. A. Upton et al. are libellants and the steamer Stars and Stripes is respondent.

Elias A. Upton, of Bangor Maine, a witness produced, sworn and examined on the part of the libellants, deposeth as follows:

1. To the first interrogatory on the part of the libellants, he answers as follows:

A. I was one of the owners and also agent for the Madonna, in 1864.

2. To the second interrogatory on the part of the libellants he answers as follows:

A. I have an account, I opened a separate account, on my books with the Madonna, so that I might know what the exact cost of repairs were. From that account on my books, the machine for which I have on file, it appears that the amount of repairs paid by me was fifty-seven hundred and five dollars and sixty-eight cents. This repair account, when all the bills were in and paid, was made up, and the amount transferred on my books to the general account of the Madonna.

E. A. UPTON.

Deponent's fees.

Travel	10
Att. one day	1 50
	$1 60

JOSEPH CARR, *Commissioner.*

72 UNITED STATES OF AMERICA, *Maine Distrtct:*

I, Joseph Carr, a commissioner, appointed by the District Court of the United States for the eastern district of Pennsylvania, to take the depositions of witnesses in a cause, civil and maratime, depending in said court, wherein E. A. Upton et al. are libellants, and the steamer "Stars and Stripes" is respondent, do hereby certify that the foregoing deposition was taken by request of the libellant, and the reason for taking the same is, that the testimony of said witness is alleged to be material and necessary in the cause pending, and that said witness lives at a greater distance from the place of trial than one hundred miles. I further certify that I caused to be and personally to appear before me, at my office, in the city of Bangor, Maine, the said witness, Elias A. Upton, on the eighth day of January, A. D. 1868, who was of lawful age, and said witness was by me carefully examined, cautioned and sworn, without fear or favor to either party, to testify the truth, the whole truth and nothing but the truth, and said deposition was reduced to writing by me, in the presence of said witness, and was afterwards subscribed by him in my presence. The agent of the libellant was notified, and was present.

In testimony whereof I have hereunto set my hand and seal this ninth day of January, in the year of our Lord one thousand eight hundred sixty-eight.

[SEAL.] JOSEPH CARR, *Commissioner.*

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In the United States District Court for the eastern district of Pennsylvania.

ELIAS A. UPTON *et al.* *vs.* THE STARS AND STRIPES. } In Admiralty. (Collision.)

The commissioner appointed to assess damages in the above cause respectfully report as folllows:

Meetings were held at the office of the commissioner, No. 524 Walnut street, in the city of Philadelphia, on December 4th, 1867, and continued from time to time by adjournment, until March 6th, 1868.

The commissioner was attended by Isaac S. Serrill, esq., proctor for libellants, M. P. Henry, esq., proctor for respondents. Thomas Watson, one of the owners of the Stars and Stripes, E. A. Upton, one of the libellants, and a number of witnesses, whose testimony, together with certain exhibits therein referred to, is hereunto annexed.

The whole claim of the libellants is stated in the paper hereto annexed, marked L. G., (G. T. B.)

The items of this claim are disposed of by the commissioner:

1. Captain Homer's claim for clothing, maps, quadrant, &c., $469 00

This claim was proved by the testimony of Captain Homer. It was contended on the part of the respondents that some of the items of the amount claimed for quadrants, charts and clothing were
74 excessive; in the absence, however, of any evidence, save that of the captain, the commissioner does not consider the claim unreasonable. If the charges are excessive, they should have been proved to be so by the respondents; they are therefore allowed.

2. Clothing of crew, four men $150 00

This claim was proved, was not objected to, and is allowed.

3. Cargo, Messrs. Williams & Paul	$656 25
" " Bowers & Johnson	685 31
Anthracite Insurance Company	945 00
	$2,286 56

Those claims are correct, were not objected to, and are allowed.

4. Freight. This claim was not objected to, and is allowed, with a deduction of $30 for port charges, viz:

Freight	$240 87
Less port charges	30 00
	$210 87

5. Expenses incurred in watching the wreck, and attempting to raise her. The items of this claim were as follow:

Watching the schooner	$173 87
Steam tow-boat to get the sails	110 00
Private expenses of Captain Homer in going down to the vessel and back, three times	14 00
Truckage on sails	1 50
Freight on small boat	3 00

Telegrams	3 58
Advertisements	11 95
Protest	11 80
Captain Homer's board and time while in Philadelphia attending to the business	247 63
	$577 29
Credit small boat sold	25 00
	$552 29

75 Of the above items, the commissioner allows the following:

Tug boat	$110 00
Truckage on sails	1 50
Freight on small boat	3 00
	$114 50
Less value of small boat sold	25 00
	$89 50

The amount realized from the sails will be found deducted from the general assessment of damages infra P, of this report.

5. The value of the Madonna.

A great deal of testimony was taken upon the point, both before the commissioner and under a commission to Bangor, Maine.

The facts in regard to the vessel are these: The Madonna was a New England vessel, built at , Maine, in 1847, and overhauled and repaired at Ovangton, in 1864. These repairs were of a very thorough character, almost everything above light water line being made new, (see deposition of Joseph Oakes;) the total cost of the repairs was $5,705 68.

The Madonna measured 147 tons, old measurement, 108 tons new. Her draft of water was 11 feet; she rated A, No. 2, at Taylor's American Lloyds. In the opinion of competent witnesses, she was not an insurable vessel.

For the purpose of this investigation, the evidence in regard to the vessel's value may be divided into three classes.

(1.) Evidence in regard to the original cost of the vessel, the amount of repairs put upon her, the profit which her owners derived from her, and the price for which shares in her were sold.

(2.) Opinions of witnesses who knew the vessel, and opinions of experts to whom she was described.

(3.) Sales of vessels of a similar class. The commissioner is of the opinion that the testimony in the first of the above-mentioned
76 classes cannot be taken as any guide for estimating the value of the Madonna.

In Dobree vs. Schroder, 2 Mylne & Craig, 489, and the Iron

Master, Swabey, 443, it was well held that estimates based upon the cost price of a vessel, and her repairs, with a deduction on account of her age, did not furnish a correct rule for estimating her value, but that the true criterion was the price for which the vessel would sell; in other words, that the measure of damages is the market price of the vessel. The South African Steamship Company vs. Swanzey, 2 K. & J., 164, and the New Jersey, Olcott's Rep., 444, are to the same effect. The commissioner therefore declines to adopt the government rule as set out in the paper prepared by Captain Young, at the request of libellant's counsel, particularly as the witness himself did not consider the rule as applicable in the present case, for his opinion as to the vessel's value was considerably below the result reached under the government rule; and the testimony of Captain Munroe (page 33 of the evidence) is to the same effect; and it may be added here, that the amount expended in repairing the Madonna cannot possibly be taken as any evidence that she was a valuable vessel, and therefore worth repairing, for at that time (1864) vessels of every kind were in great demand for government use, and almost anything that could carry a cargo of any sort could find profitable employment. The circumstance that her owners thought it expedient to expend the amount which they did in repairs at that time, would be very unfairly used if it were applied as a test of the Madonna's value in the spring of 1867, the date of her loss.

If the authorities above referred to contain a correct statement of the law, there will be no necessity for considering the testimony of the parties by whom the vessel was repaired, nor any evidence as to her original cost. Nor is the commissioner disposed to give much weight to the purchase of one-eighth of the Madonna, in May, 1864, by Hannah G. Elder, for $1,100, and of a like share in the
77 spring of 1866, by George A. Thatcher, for $1,000, for it appears in evidence that the purchase of shares of vessels is no true test of the value of the whole vessel, as they are generally bought by persons having a special object in making the purchase, such as to draw custom, secure control of the vessel, and so forth. And it may perhaps not be improper to remark that the most natural presumption would be somewhat against the advisability of this particular investment, when the sex of the first of the purchasers above named is taken into consideration.

Coming now to the second class of testimony mentioned above, we have the opinions of witnesses who knew the Madonna by personal inspection, and of those whose knowledge of her was derived from description.

The deposition of Mr. Upton, one of the libellants, cannot be considered of much weight, for however trustworthy his statements of facts might be, his opinion on a subject in which he is directly interested cannot be considered as altogether reliable.

The testimony of Dates seems to be contradictory in itself, and at variance with established facts; for he estimates the value of the Madonna in 1864, before her repairs, at from $2,500 to $3,000, and her value in 1866, after $5,000 or $6,000 repairs had been put on her,

at $9,000—in other words, he considered that the value of the vessel was increased to an amount greater than the cost of repairs put upon her, whereas almost all competent witnesses agree in this one fact, viz., that the value of a vessel is never increased to the extent of the amount paid for her repairs, for the obvious reason that a great deal of labor is expended in taking out old material, which does not add to the value of the vessel. In regard to the other depositions of the New England witnesses, they all seem to be influenced in their calculations by the original cost of the vessel, the amount of repairs, and her capacity for being profitably employed, and are not based upon her supposed selling price. This testimony, therefore, does not furnish a fair test of value, if the view of the rule for estimating damages already stated is correct.

78 On the other hand, we have the testimony of Messrs. Fisher and Vaughan, who saw and carefully inspected the Madonna, and who express the opinion that her selling value would be about $2,500. And they give as the grounds for their opinion references to actual sales of vessels of a similar or higher class.

In corroboration of this is the evidence of some of the largest and most experienced ship-owners in Philadelphia, to whom the description of the Madonna was read, and who all estimate her value at sums ranging from $2,000 to $3,000. Such is the testimony of Messrs. Stetson, James Baker and Elisha Baker, and this estimate is confirmed substantially by the evidence of Captain Young and Captain Munroe.

The third class of testimony as to the value of the Madonna consisted in instances of sales of vessels of a similar character. It will be sufficient perhaps to refer to the cases of the William Springs, a vessel of 216 tons, new measurement, built in Philadelphia in 1854, and sold in New York, in July, 1857, for $4,200; and of the Philip Lavater, a brig built in Bath, Maine, in 1854, of 286 tons burden, sold in Providence, (R. I.,) in the fall of 1867, for $4,000 These sales show that the estimate placed upon the Madonna by the New England witnesses is so excessive as to be altogether unreliable.

It was argued before the commissioner, that inasmuch as the Madonna was built expressly for the lumber trade, and could be profitably employed by her owners in that trade, and was actually so employed, the measure of damages should be compensation to the libellants for the loss of what was (to them) a profitable vessel. In answer to this, it will probably be sufficient to refer to the case of the Granite State, 3 Wallace, 310, where a commissioner fixed the value of a barge that had been destroyed at $850, assuming that she was worth this sum to her owners. This report was set aside and a new assessment directed; the damages were then assessed at $150. When the case came up to the Supreme Court, Judge Grier, on delivering the opinion, said: "There cannot be an estab-

79 lished market value for barges, boats and other articles of that description, as in case of grain, cotton or stock. The value of such a boat depends upon the accidents of its form, age and materials, and as these differ in each individual, there can be no

established market value. A person may make considerable profit by the use of an old hulk, of little value in the market for vessels. His loss cannot be measured by the rates of her profits, as he might supply himself with another at a much cheaper rate."

It was argued, moreover, on the part of the libellants, that the evidence showed that this vessel was built for, and particularly adapted to the lumber trade in Bangor, and was not suitable for the general trade in Philadelphia, and that the latter place was therefore a less favorable market for the sale or purchase of such vessels than her home port. Some of the testimony tended to show that vessels of this class were more valuable in the eastern ports than in Philadelphia, and it was thereupon urged that it would be unfair to the libellant to select the most unfavorable market as a test of value.

The commissioner admits that to take the most unfavorable market would be unfair, but it is also equally unfair to the respondents to take the highest price at the most favorable market, where vessels of that class are wanted for a special purpose. The commissioner has therefore been guided by general evidence of value, without reference to the value at any particular port.

Upon a consideration of the whole testimony in the cause, the commissioner is disposed to allow $3,000 as the value of the Madonna.

Interest is to be allowed from the date of the collision, May 9th, 1867.

The statement on the succeeding page will show the whole amount awarded by the commissioner.

80	Captain Homer's claim	$469 00	
	Interest from May 9th, 1867, to March 24th, 1868	24 57	
			$493 57
	Clothing of crew	150 00	
	Interest	7 87½	
			157 87½
	Cargo	2,286 56	
	Interest	120 02	
			2,406 58
	Freight	240 87	
	Less port charges	30 00	
		210 87	
	Interest	11 02½	
			221 89½
	Expense of saving sails, &c	89 50	
	Interest	4 62	
			94 12
	Value of the Madonna	3,000 00	
	Less value of sails saved, which were sold for	199 14	

Paid for storage	6 50		
	192 64	192 64	
		2,807 36	
(Bazeley's claim of $125 not allowed.)			
Interest		147 32	
			$2,954 68

Costs.

Commissioner's fee	$150 00

Respectfully submitted.

GEO. TUCKER BISPHAM,
Commissioner.

81 Please take notice that my report in this cause will be filed on Friday, March 27.

I accept service of the above notice:

FALLON & SERRILL,
For Libellants.
MORTON P. HENRY,
For Stars and Stripes.

Exceptions by libellant to the commissioner's report.

E. A. UPTON
vs.
THE STARS AND STRIPES. } In admiralty.—Collision.

Exceptions to the report of the commissioner appointed to assess damages:

1. The commissioner has erred in finding the value of the Madonna and assessing the damages for her loss at an amount below her real value, viz., at the sum of three thousand dollars, because the said assessment is against the weight of the evidence.

2. Because, though the evidence clearly showed that the port of Philadelphia was the most unfavorable market for the sale of such a vessel, yet the commissioner adopted, as the test of her value, her market price at said port, as established by the opinions of witnesses residing there, and whose evidence for the most part is a mere statement of the amount they could afford to give for said vessel, either for speculation or employment in their own business, and the
82 commissioner erred in rejecting the item of expenses incurred for watching the vessel.

3. In rejecting the item of expenses incurred by Capt. Homer subsequent to the collision.

FALLON & SERRILL,
Proctors for Libellants.

U. S. D. C.

Report of commissioner disallowing exceptions of libellants.

UPTON *et al.*
vs.
THE STARS AND STRIPES.

Certain exceptions on the part of the libellants were filed with the commissioner, the same being hereunto annexed.

The commissioner has considered these exceptions, and is of opinion that they are not well taken.

They are accordingly disallowed.

March 27, 1868.

GEO. TUCKER BISPHAM,
Commissioner.

Testimony taken and exhibits given in evidence by libellants.—Sur reference to assess damages and returned by the commissioner, Geo. T. Bispham, esquire.

DECEMBER 18, 1867.

Charles A. Warren, sworn: I am a ship broker, residing in this city; I was at one time doing business in Portland, Maine; my business here has connection with eastern schooners. I was in a
83 similar business in Portland; I have been in business here about three years. In Portland I was in business since 1857. I do not think that any vessel would bring as much here as at Bangor, Boston or New York. In regard to eastern built schooners, if I had one to sell I should send it east, to Bangor, Portland, Bangor or New York; it is a better market; it is impossible to sell a vessel here. The Bangor and Portland schooners are mostly owned eastward; we generally buy shares in the way of business, rarely bought here as an investment; the price of vessels here is at least 25 per cent. less than at Bangor. That has been my experience since I have been here. Very few vessels are owned here for investment. The coal schooners here are of broader beam and draw less water than the Bangor lumber vessels; some of them have centre boards.

Cross-examined.

New York is about as fair a test for vessel value as in the United States; it is full as good.

If a vessel of mine was here, I should not send her to New York, but to Boston or Portland, for sale.

For coasting trade, the selling value here would be affected by draught of water, as compared with tonnage; not elsewhere.

A light draught water is valuable for coasting vessels. There is plenty of water for 11 feet vessels above the bridges, in Boston. For carrying, old model is as good as new for general trade; 10 or 11 feet is a good draught; would not be out of proportion for a vessel

carrying 190 tons of coal; 11 feet for vessels of 190 tons may be an unusual draught for vessels built here, but not for eastern-built vessels.

Re-examined.

An eastern-built vessel, drawing 11 feet of water, in good freight times, can always get remunerative employment. The selling value of vessels depends upon the freight market.

CHAS. A. WARREN.

84 J. E. Bazley, sworn: My business is a ship broker; reside in this city. I have to do with eastern vessels; I have a general knowledge of shipping market; have had fifteen years experience in the business. The eastern-built vessels are generally owned in Maine—I mean the Maine vessels.

Question. Where are the Maine-built coasting vessels generally owned?

Answer. In Maine, with the exception of interests owned here by brokers, &c.

Eastern ports are better market for Maine-built vessels than Philadelphia; I speak from sales made and attempted to be made by ourselves.

I do not know that I ever sold a Maine coasting vessel here. I would send an eastern-built schooner for sale to Boston or Portland.

When tonnage is sold here, it is generally sold under pressure; very few sold at auction.

Cross-examined.

I do not remember any cases, except during the war, of vessels selling at auction better than I expected. We never could sell coasting vessels here, though we have had a good many for sale.

I should not think New York market the best test for values of schooners; it would be Boston or Portland. In ascertaining the value of vessels, the age and capacity for being insured are elements.

The eastern-built vessels are better adapted for the lumber and general coasting trade, for deck loads, than Philadelphia-built vessels, with centre boards. Iron fastening is considered as an objection. The Maine vessels are not more cheaply built than here; I know a great many vessels twenty years old and rebuilt, to be classed, many, A. 2. I do not know whether they were refastened.

85 *Re-examined.*

After the Madonna was sunk, the captain came to us for assistance and advice. The captain advertised for proposals to raise the Madonna.

We attended to it for him; I do not remember the date. Vessels for lumber trade are valued more highly in Maine than here—eastern vessels—I mean Maine. The schooner Madonna is capable of carry-

ing a large deck load of lumber; her last model did not strike me as old fashioned.

J. EDWARD BAZLEY.

I do not; a coasting vessel carrying 200 tons could be bought for $2,000.

J. E. B.

Henry L. Grigg: Am a ship broker; reside here; I formerly followed the sea; it was altogether in Maine vessels; I am familiar with vessels of all classes; sailing vessels.

I then resided in Portland; I have been three years in my present business; our business is generally with coasting; West India and foreign. Most of our business is with Maine vessels; that class of vessels is generally owned in Maine.

Shares bought here are generally bought in the way of business. Parties here very seldom buy those shares for investment. We need a different class of vessels here from what they do in Maine. The market here is not so good for those vessels as in Maine. Principal business out of Philadelphia is carrying heavy freight, and for that they want a vessel that can carry heavy freight, or a light draught of water; the same class of vessels in Maine are wanted for deck loads, and are therefore built deeper and stronger.

A vessel carrying a large deck load is particularly suited for the lumber trade; shoal vessels for coal trade. Deck load vessels must be deeper; they are stronger, and more seaworthy.

86 There is no difficulty in getting a vessel that draws eleven feet profitable employment in the eastern trade; there would be here. That is the reason why such a vessel would not be so salable here as in Maine. A vessel carrying 200 tons, drawing eleven feet water deep loaded, is not unusual. No regular public sales of vessels at this market. Price of vessels depend on freight market.

Cross-examined.

I never saw the Madonna; the southern lumber trade does not require light-draught vessels; most of the North Carolina ports use vessels of twelve or fourteen feet; Georgia ports are deeper; Florida shoaler; Newbern from eight to ten feet. There are a number of ports where you can't get more than eight or ten. I think a majority of lumber mills are situated where vessels can load at twelve feet of water, and get out. I do not know of any place where there are regular sales at auction of vessels.

Re-examined.

Last spring, a man with $2,000 could have bought a good pleasure boat or an oyster sloop. I don't think he could have bought a seaworthy coasting vessel carrying two hundred tons for that price.

HENRY L. GRIGG.

A. S. Hughes, sworn: I reside in this city; I have a tug-boat at present; I was formerly a sea captain for some three years; I have been in my present business about four years; I commanded a bark and two brigs; the bark was built in Wilmington; brigs were eastern. I am familiar with Maine vessels and with Philadelphia-built vessels; I have a general knowledge of vessel property. A Maine-built engaged in the lumber trade would not bring as good a price
87 here as in Maine, because they have a better opinion of their own vessels; I refer to the coasting vessels; Maine-built vessels are generally owned at home, very rarely owned here.

There is a difference in the build between a Maine and a Philadelphia vessel. Our vessels (the coal fleet) are light draught, and have a centre-board. Maine vessels are built deeper. Vessels with centre-board don't require ballast. Keel vessels require considerable ballast. Maine vessels are built to carry heavy deck loads, which is generally lumber.

A vessel which draws eleven feet water would be suitable for the West India and general coasting business. I should think that last spring $2,500 would buy a very poor vessel. I think it doubtful whether you could get her insured. Chances of getting a seaworthy vessel for that sum would be small. Price of vessels depends on freight.

Cross-examined.

Q. What is your opinion of a vessel twenty-one years old, old bottomed, iron-fastened, eastern-built, rebuilt but old bottom, as to her salability?

A. A vessel rebuilt is not as a general rule as good as a new vessel. A vessel of class you describe is not a desirable vessel.

Re-examined.

Putting a new top on a vessel affords a presumption that the vessel is worth repairing.

A. S. HUGHES.

FRIDAY, *January 17th*, 1868.

Mr. Serrill offers paper marked "B 1;" admitted.

John H. Young, sworn: I have been a sea captain, and am familiar with the value of vessels. The rule is to ascertain the
88 original cost of a vessel, (I mean the rule adopted by the government during the war to ascertain the value of a vessel,) is to take the original cost per ton, deducting therefrom five per cent. per annum for depreciation, increased by the appreciation of material say thirty per cent. In rebuilding a vessel, the general rule is to deduct one-fourth of the total amount of expenses for tearing out the old timber to give place to the new. That is not supposed to enhance the value of the vessel, but is supposed to be thrown away; I mean the one-fourth. The aggregate of these two results would be the value of the vessel.

Question. Taking the original cost of the Madonna at $55 per ton, her age in 1864 at seventeen years, and the amount of repairs put on her in 1864 at $5,705 68-100, what is the value of the vessel according to the rule you have stated?

Answer. (Witness exhibits paper marked "B, 2" as the result of his estimate.) This is her value at 1864. I did not know the exact date of collision. Fifteen per cent. from her worth in 1864 must be deducted, to arrive at her value at the date of the collision.

Cross-examined.

By the technical rule you reduce the value of this vessel to a little under $5,000. The selling value of vessels are unquestionably affected by their carrying capacities, independently of the rule I have stated.

Q. Is a vessel of the tonnage, carrying capacity and draught of water of the Madonna one that can be profitably employed in the general coasting trade of the United States?

A. Yes, sir.

Q. In the coal trade?

A. Yes, sir; her draught would cut her off from a great number of ports to which small vessels go. She would come into competition with vessels that would sail cheaper. She is not so profitable as vessels of larger capacity; for a vessel of one hundred tons
89 greater carrying capacity could be sailed more cheaply; but still she is a profitable vessel. I do not think, as far as my knowledge goes, that the Madonna would have brought $5,000 in May, 1867; I mean in this market and that of New York.

Q. What is the outside price at which that vessel could have been purchased or sold?

A. I should say $3,500 or $4,000 would be the very outside, and then only if she was in good condition. I watch the sales of vessels reported in the newspapers. I am appraiser in the U. S. Dist. Court. A vessel of equal capacity and value with the Madonna could have been bought for $3,500 or $4,000. The sails were scarcely half worn if they were a year old in May, 1867. Vessel property was very low, and employment was very bad, but more so for large vessels than for small. There was no employment for large vessels.

Re-examined.

The sale I speak of is a sale in the usual way through ship-brokers; not a forced sale. I do not know of any sales of vessels of that kind at that time, but I keep the run of sales. Vessel property is now better. It would cost more to buy such a vessel now. If that vessel was worth $3,500 in May, she would be worth $4,500 or $5,000 now. It is difficult for me to give an estimate, in consequence of the age of the vessel and the difficulty of insuring her.

JOHN H. YOUNG.

Sworn and subscribed before

GEO. TUCKER BISPHAM,
Commissioner.

90 JANUARY 20, 1868.

John C. Darrah sworn: Am a member of the firm of Darrah & Elwell, ship chandlers. We furnish anchors, chains, rigging, iron work and sail cloth; no spars; we buy them on order. I am familiar with the cost of furnishing a vessel with all these; they are all in our line. I am familiar with the size and build of the Madonna. I have made a calculation of the value of these things in the Madonna; that is, their cost as new in 1864; I speak of Philadelphia prices.

(Estimate produced, marked "C, No. 1.")

In May, 1867, the articles would have probably depreciated, three years, thirty per cent. A set of sails will last, with reasonable wear and tear, from five to seven years; I speak of new cotton sails.

Cross-examined.

The tonnage of the Madonna is 147, new measurement; this estimate is made accordingly. It is excessive for a vessel of 106 tons, new. I never saw the Madonna. The estimate is made from a vessel as appears upon the register. There has been a great fall in value in cotton sails from 1864 to 1867. I reckon sails would cost $1,000; rigging $2,000.

Question. You have answered that the value of sails, new in 1864, would be $3,000; what would be the value of new sails of the same character in 1867?

Answer. The sails would cost in May, 1867, about one-third less than that estimate. The rigging would not cost five per cent. less.

Q. What would be the estimate in 1867?

A. The value of the canvas would be $667 87; the other prices the same; the vessels are not sparred differently now; we have the length, depth, breadth and carrying capacity from the American Lloyds, and her rate; the number of yards of canvas are estimated from sail-maker's drafts.

JOHN G. DARRAH.

91 JANUARY 30, 1868.

Thomas G. Munroe sworn: I am a marine surveyor and inspector for the board of marine underwriters; I am familiar with Lloyds publication in which vessels are registered.

There are two Lloyds in New York, one the universal Lloyds and the other the American Lloyds; two books published by two different parties; we use one published by Taylor; the other is published by King & Hartshun; Taylor has the registry of the Madonna; the two books are about the same, as to correctness and reliability; the Madonna's rate in Taylor's is A 2; the full description is there, as regards her age; we have a register of vessels of our own; we pay no attention to the New York books, because anybody can get a rate in those books who chooses to pay for them; our book is made up from our own surveys and examinations; it is exclusively for the use of

the underwriters; this book of ours contains a full description of vessels—all the details; on a question of valuation for underwriters, that is the book we apply to for information; the Madonna is registered in that book; she is rated A 2; during the war I was frequently applied to to put valuations on vessels for the government; it was for parties purposing to charter to the government; the charter usually contained a valuation; the valuation was made by a rule which we generally applied; we modified it by our own judgment.

(Captain Young's statement handed to witness.)

I don't see any sense in this; I don't know anything about these papers; I don't consider that that is arriving at the value of the vessel; he makes no allowance for the value of the vessel as regards investment value; she would not have sold, at her age, for anything like the repairs; I can't agree with that statement; I have known vessels to sell for less than their repairs, under sales—under suits of repairs; the May Read had $9,000 repairs, sold under attachment for $7,000, afterwards for $9,000; she was only about 18 months old.

92 *Cross-examined.*

I am owner of vessels; if I had to run the Madonna, I would not have her; she could not make money; she is not fit for investment; she was not fit for a dry and perishable cargo; I examined her a year before the collision; we would tell our employers not to insure except at exorbitant rates; she could carry coal and lumber, but she is not fit to carry lumber; she had a value for her owner; I watch the sales of vessels.

Question. At what rate could a vessel of equal carrying capacity with the Madonna, and in other respects similar, be purchased?

Answer. This is a difficult question to answer. She is no investment; I feel at a loss to answer the question; I really don't know what she is worth; I would not give $3,000 for her myself; the Madonna would not pay 3 per cent.; persons don't invest unless they can make 4 or 5 per cent.

Q. What, in your judgment, could that vessel have been sold for, if sold in a manner to bring the best price?

A. I really don't know; she might have brought $3,000, if bought by parties to draw an interest in their business, not for the purpose of investment. Philadelphia is as good a market as any to test the value of a vessel; parties in Philadelphia buy more old vessels to break up than in any other place; the sails and rigging, running and standing, amount to about one-quarter of the value of the vessel; I am speaking of fore-and-aft vessels.

Re-examined.

I contend and take the position that a vessel 20 years old has no merchantable value, because she would not bring her repairs. Assuming the date in Captain Young's statement to be true, I think the application of the government rule would not produce this re-

sult, because I mention the barque Victori, a vessel of about the same age, having had extensive repairs in 1857 or 1858, that merchants refuse to charter on account of age and expenses
93 attending the age; and all vessels after 16 or 17 years old are not durable vessels for general commercial purposes, although having large amounts laid out on them at times.

The government did charter vessels as old as the Madonna to carry coal for short coasting trips.

THOMAS G. MUNROE.

J. E. Baisley, sworn: Certain sails of the Madonna were brought by the captain to our store, and stored in the sail loft; we had them sold at auction, by Powell & West, after three or four days' advertisement, at the request of the solicitors of Mr. Upton. (Account sales, marked A 6, shown witness.) This is the account sales that Powell & West rendered us; we rendered a statement (marked A 7) of the balance paid over to Fallon & Serrill; the item of $125 was for our services. Captain Homer called on us immediately after the collision, and wished us to advise him in this matter and assist him; we employed counsel for him; we sent to a number of parties whom we supposed would be able to raise the vessel, and advertised also for proposals to raise her; we introduced Captain Homer to Morris & Co. Under our superintendance the contract with Morris & Co. was made; we employed a tug to go to the vessel and take away the sails and whatever could be got off her, which was done. Morris & Co. failed to do what they agreed; we kept on making efforts to produce parties to raise this vessel. The matter then passed into the hands of Messrs. Fallon & Serrill; we consider our charge reasonable, much less than we would have charged other parties for of whom we had no knowledge; the charge of $110 for a tug is a reasonable one; there was a light on the mast head and two men in a boat about the wreck, as watchmen; do not know whether the amount paid them was reasonable; they were down there a long time.

The charge of 14, by captain, truckage and other small items attached to Homer's deposition, are reasonable. The watchmen were sent there to prevent the property from being stolen.
94 I do not know when the sails were taken off; we supposed the vessel would be raised, and the captain feared that the rigging and spars would be stolen if watchmen were not employed.

The captain was detained here about five weeks; he did not wish people to think that the vessel was abandoned.

J. E. BAISLEY.

A No. 1.—S. T. B.

Invoice of 32 *barrels and* 10 *half barrels family beef shipped to Messrs. Bowen & Johnson, Bangor, Maine, per schooner Madonna.*

32 barrels family beef, $24 00	$768 00
10 half barrels family beef, 13 50	135 00
	$903 00

Philadelphia, May 7, 1867.
ADAM H. WARTHMAN & COMPANY.

A No. 2.—S. T. B.

Sales by Powell & West, auctioneers, per account whom it may concern.

PHILADELPHIA, *May* 24, 1867.

14 barrels beef, $25 25		$353 50
8 half barrels beef, 12 50		100 00
		$453 50
Commission	$22 68	
U. S. tax	46	
Porterage	$4 00	
Advertising, &c.	3 87	
Cooperage	4 80	
	12 67	
		35 81
		$417 69
Off for salvage		200 00
		$217 69

95 B. 1.—S. T. B.

PHILADELPHIA, *January* 8, 1868.

We agree to pay to the schooner Madonna, Captain Homer, twenty cents (20 cts.) freight per box on one hundred and twenty-five boxes oranges, shipped 8th day of May, 1867, to be delivered to Portland, Maine.

WILLIAM McWILLIAMS.

$125
20

$25 00

WARREN, GREGG & MORRIS, SHIP BROKERS,
No. 304 *South Delaware avenue, Philadelphia, January* 15, 1868.

Messrs. Fallon & Serrill, 520 Walnut street:

GENTS: On the 17th of May, 1867, we chartered the schooner F. W. Tower, 271 tons coal, to Bangor, at 2.25, which we consider a fair freight at that time; the same rate was paid to Boston and Portland; at that time the beef we should pay (75 cts.) seventy-five cents per barrel as fair rate.

Very truly yours,
WARREN, GREGG & CO.

A cargo of 175 to 200 tons, generally, can obtain a little better rate than one of 275 to 300.

96 *Claim for freight.*

[B. v. 1.]

125 boxes oranges, at 20 cents		$25 00
32 bbls beef		
10 half bbls.—42 lbs., at 75 cents		31 50
189 tons coal, at $2 25		425 25
Total		$481 75
50 per cent. off	2 40	
Porterage	30	
		270 00
50 per cent. off, and port charges off		$211 75

The Anthracite Insurance Company.

189 tons egg coal, insured at $9 45.

2, 4.—S. T. B.

Statement of earnings of schooner Madonna, and amount of cash received by me from the master of said vessel, for net earnings belonging to the owners, as taken from my books:

A. D. 1864.

Gross amount of earnings for the season	$6,401 96	
Amount received from master in settlement as owners' part		$2,530 95

A. D. 1865.

Gross amount of earnings for the season	$8,594 40	
Amount received from master as owners' part		$3,353 34

A. D. 1866.

Gross amount of earnings for the season····	$8,826 09	
Amount received from master as owners' part·····		$3,085 97
(The last trip included above may have run into the year 1867.)		
Gross earnings for three seasons·····	23,822 47	
Amount received by me for owners' part for three seasons·····		$8,970 26

E. A. UPTON,
Agent for Schooner Madonna.

97 MAINE DISTRICT, UNITED STATES COMMISSIONER'S OFFICE,
February 4th, 1868.

Personally appeared before me the above-named E. A. Upton, and made oath that the foregoing statement by him subscribed is correct and true.

JOSEPH CARR,
Commissioner Circuit Court U. S., Maine District.

A. 4.

To whom it may concern: I, Robert McManus, of Brunswick, Maine, duly authorized and appointed inspector for the State of Maine of the American Lloyds, for the purpose of inspecting and classing vessels, do hereby state and certify that in the spring of the year A. D. 1867 I was called upon by E. A. Upton of Bangor, to inspect and class the schooner Madonna, of Bangor; that he, with the other owners, had just been rebuilding, and found upon examination that the old hull structure, in any way defective, had been removed down to the floor timber heads, and from that point she was rebuilt with new materials in most thorough and substantial manner, and refitted with new spars, rigging and sails, and was put in such good order, and to me satisfactory condition, that I consider her worthy of it, and classed her A 1½; which is as good rate as I usually give any entirely new vessel of her class, unless of extra superior quality.

ROBERT McMANUS.

Brunswick, Dec. 5th, 1867.

CUMBERLAND, *ss:* BRUNSWICK, *Dec.* 5, 1867.

Personally appeared Robert McManus and made oath that the written statement by him signed is true, according to his knowledge and belief. Before me,

J. W. FORWORTH,
Justice of the Peace.

[5-cent internal revenue stamp.]

98 This may certify that in the spring of 1866 I purchased one-eighth of schooner Madonna, of Bangor, for which I paid one thousand dollars in cash. The purchase was made solely with the view of a good investment of money on hands.

The vessel had been rebuilt and put in thorough condition not long before I bought, and there has been no time since when I would have sold at the same price.

GEORGE A. THATCHER.

Bangor, Dec. 4, 1867.

PENOBSCOT, STATE OF MAINE, *ss:*

BANGOR, *Dec.* 4, 1867.

Personally appeared the above-named Geo. A. Thatcher and made oath to the above certificate signed by him before me.

A. G. WAKEFIELD,
Justice of the Peace.

This is to certify that in May, 1864, after the schooner Madonna, of Bangor, had been rebuilt and fitted for sea, I purchased one-eighth of said vessel, and paid for the same eleven hundred dollars in cash. This purchase I made for an investment of money on hand, and considered it a good purchase at the time.

$1,100. Bangor, 4th Dec'r, 1867.

HANNAH G. ELDER.

PENOBSCOT, STATE OF MAINE, *ss:*

BANGOR, *Dec.* 4, 1867.

Personally appeared the above-named Hannah G. Elder and acknowledged the above certificate by her signed to be correct. Sworn to before me.

GEO. H. BARTLETT,
Justice of the Peace.

99 This is to certify that I did superintend in the rebuilding of the schooner Madonna, in the year of 1864, at Orrington. In the first place took off sails, and rigging, and spars, masts and bowsprit, and everything in the shape of rigging and spars. Then commenced and took off all the top of the vessel down one plank below the wales, including nearly all the timbers, and a large number below; from the pumps aft all the timber was new, or nearly so, down to the keelson, and nearly all the ceiling and part of the clamps new; all the knees and most of the beams are new; all the decks and houses were new; all the rails new, bulwarks new; all the dead wood new; the most of the after-woods new on board, and a number of new fore-woods; about half of a new stem, new cut-water, nearly all new spars and standing rigging; mostly new sails at the time, and in fact everything was done that was needed to be done, and in a workmanlike manner, and cost in all, I should say, at least $5,500, and could not be done last season or this not less than $7,500. I done first rate, and

inspected by the American Lloyds, and rated A 1½, with a ———, and I considered her as good as new. I don't know where to have put on anything to have bettered it in any way; she was most thoroughly fastened with iron and locust, and in every a first-class vessel, and all the work done by the day. I sold one-eighth of the vessel after she was done for $1,100, and after that sold one-eighth for $1,000, one hundred dollars less than I would had it not been to get money out of something. I consider her at the time the steamer struck her worth $9,000 at the lowest estimation.

A. P. VEAZIE.

STATE OF MAINE, *Penobscot, ss:*

I, the undersigned, a justice of the peace, within and for the county of Penobscot, certify that on this 3d day of May, in the year one thousand eight hundred and sixty-seven, the aforesaid deponent was first sworn, according to law, to testify the truth, the whole
100 truth and nothing but the truth, relating to the cause or matter for which the deposition was to be taken, and thereupon gave the foregoing deposition, which was written down by him in my presence.

That the deposition was taken at the request of the plaintiffs, hereinafter named; that the adverse party was not notified to attend; that he did not attend; that the cause in which the deposition is to be used is an action in admiralty; that the names of the parties thereto are owners of schooner Madonna, libellant, and steamer Stars and Stripes.

That the court of tribunal in which the cause is to be tried is the U. S. District Court; that the place, Philadelphia, in the county of and the day of in the year one thousand eight hundred and , and that the cause of the taking the deposition is that the deponent resides in a town other than that in which the trial of said cause is to be had.

Fees.

Deponent's travel and attendance.
Justice fee.
Notice to adverse party.
Notice to deponent.

JOHN A. PETERS,
Justice of the Peace.

Deposition on behalf of libellant.

THE STARS AND STRIPES:

E. A. Upton, being duly sworn, says: I am a part owner and agent for the schooner Madonna; our vessel will sell better in the spring than in the fall; this vessel I should not have sold for less than
101 from $8,500 to $9,000; if the sails are in good condition, I should say $9,000; if she need many sails I should say $8,500.

I consider $9,000 her fair market value; she was built, if my memory serves me right, 20 years ago; three years ago last winter we new topped her; we took off her decks and ways, and the planks down to light water, and removed all defective timber, and made her rate at the American Lloyds A 2. I mean Mr. Taylor's establishment, in New York; we had at that time new standing rigging and sails; some new spars; we had a new mainmast put in her; these repairs were made at Orrington, Maine; we expended on her at that time, my impression is, over $5,000, and the same repairs at the present time would cost 40 per cent. more. A. P. Veazie superintended it; he is a part owner; one-eighth of that vessel was sold at the rate of $11,000 about two years ago to a lady for investment; Captain Veazie sold it to a Mrs. Elder; another eighth sold by Captain Veazie last year, or thereabouts, for one thousand dollars; she carried about one hundred and ninety tons of coal; her tonage, old measurement, about 147; new, 108. I reside in Bangor, Maine. I own, buy and run vessels; that is my business, and am familiar with their value.

Cross-examined.

She was cut through by ice in the river Delaware, and was repaired here at an expense of about $1,300.

E. A. UPTON.

Sworn and subscribed the 16th May, 1867.

J. P. DELANEY, *Alderman.*

Captain H. H. Homer: I was the master of the schooner Madonna. I reside near Bangor, and am familiar with the value of vessels. I have heard Mr. Upton's statement as to value; it coincides with mine; when I came on board of her a year ago last December, she had all new ceiling, new deck frame, new clamps, new deck, and all new wales and new plank down to light water, and new rail
102 and bulwarks, and new house on deck; she had a new mainmast and all new standing rigging fore and aft; she was newly painted and furnished. I should call as good as new.

Cross-examined.

She has still the original bottom and original plank in her bottom below light water; ceiling all new; she has original keel, but new keelson and rider; stem-post and stem are original; the transom is new; her sails were new at that time; the oldest sail is the foresail; it is three years old; the rest are newer; she is not coppered; the square sail and flying jib new last fall; her sails are part hemp and cotton; those which are new are cotton; the gaff topsail is cotton and the three jibs are cotton; topsail, foresail and mainsail are hemp; the topsail and mainsail are one year old, and the foresail two years old.

H. H. HOMER.

Sworn and subscribed the 16th May, 1867, before me.

J. P. DELANEY, *Alderman.*

Exhibit B 2, *G. T. B.—Memorandum, cost of schooner "Madonna."*

Schooner Madonna, 147 tons measurement, cost when new, $55 per ton		$8,085 00
In 1864, time the repairs were made, said vessel was 17 years old; allowing 5 per cent. per annum depreciation, at 85 per cent., deduct		6,872 25
		1,212 75
Add appreciation of material in '64, when the repairs were made, 30 per cent		363 82
Value of the Madonna when the repairs were commenced		1,576 57
103 The repairs in '64 are stated as costing	$5,705 60	
From which deduct ¼ for tearing out the old to give place to the new material, and which does not enhance the value of the vessel at all, but may be considered as so much labor or money thrown away	1,426 42	
		$4,279 27
Value of the vessel when the repairs were completed		5,855 83
Deduct 3 years' depreciation, say up to the time of collision, '67, at 5 per cent., is 15 per cent		898 37
Value of Madonna at time of collision		4,977 46

Exhibits given in evidence by libellants sur reference to assess damage.

520 WALNUT ST., *May* 13, 1867.

Messrs. Thomas Wattson & Sons:

DEAR SIRS: In the matter of raising the schooner Madonna, sunk last week by the Stars and Stripes, Capt. Homer informs us that the lowest bid for the contract to have her raised and brought to the city is 50 per cent. of the value of vessel and cargo.

When entering the security on Saturday, we understood one of your firm to say that this work could be done for about a thousand dollars. We write to inform you of the lowest bid Capt. H. can get, and that if you will undertake to have it done at that rate, viz., $1,000, we beg you will undertake it at once, or refer us to any
104 responsible parties you know of who will undertake it at that rate, or any less than the offer we have made to us.

Please let us have an answer at your earliest convenience, as Capt. Homer desires to close the contract to-morrow.

Yours, respectfully,

FALLON & SERRILL,
Att'ys for Capt. Homer.

416 WALNUT ST., *May* 13.

GENTLEMEN: In reply to yours of this morning to Thomas Wattson & Sons, I beg to say our remark was based on the advice of a competent insurance agent. It is supported by estimates of experienced men, after looking at the vessel. But we are not ourselves prepared to undertake the contract, and believing we are not liable under the circumstance, must leave you to make your own arrangements.

Very truly,

R. C. McMURTRIE.

Messrs. Fallon & Serrill, Walnut st.

520 WALNUT ST., *May* 13, 1867.

DEAR SIR: Your note of to-day is received. Will your clients please favor us at once with the name of the "competent insurance agent" of whom you speak, and also the names of the "experienced men" who have made the estimates spoken of? Our sole object is to enable Capt. Homer to get on the track of whatever parties will do this work at the lowest figures and avoid future dispute and expenses.

Yours, truly,

FALLON & SERRILL,
For Capt. H.

R. C. McMurtrie, Esq.

105 GENTLEMEN: H. K. Carter, Phenias K. Vaughan, John E. Peterson and J. H. Holmes have made an estimate of what the work is worth, and Capt. Munro is the insurance agent I referred to.

Very respectfully,

R. C. McMURTRIE.

Messrs. Fallon & Serrill.

May 13, '67.

520 WALNUT ST., *May* 14, '67.

Messrs. Thomas Wattson & Sons;

DEAR SIRS: We received a note yesterday from your counsel, giving us the names of certain parties who, it appears, have made estimates of the cost of raising the schooner Madonna, and upon whose statements you appear to found your opinion and assertion that she can be got up for the amount stated, viz: $1,000.

Whatever these opinions may be worth, what we want to know is whether you have a knowledge of or can refer us to any responsible parties who can and will do the work at that figure at once. If the estimates of these parties are worth anything they must be founded on some amount of knowledge of such work being actually done, either by themselves or others, and we should like to have any information that will enable us to get access to such parties, none of whom Capt. Homer has yet been able to find.

Please let us hear from you not later than 12 o'clock M. to-day, as Capt. H. is about to close his contract, and no time is to be lost, for a storm may break the vessel up at any hour.

Yours, truly,

FALLON & SERRILL,
Attorneys for Capt. Homer.

106 PHILADELPHIA, *May* 16, 1867.

This agreement witnesseth between Captain H. H. Homer, of schooner "Madonna," for and on account of owner or owners, of the first part, and Messrs. E. J. Morris & Co., Lewes, wreckers, of the second part. It is agreed on the part of E. J. Morris & Co., so far as practicable, to raise and bring to the port of Philadelphia the schooner "Madonna," now lying sunk in the river Delaware, between Morris island and Duck creek, on the western shore of said river; and for such service it is agreed by the party of the first part that Messrs. E. J. Morris & Co. shall have fifty (50) per cent. of all such vessel, including all material and cargo that has been and may be saved, and in the full performance we hereunto affix our seal in the presence of

JAS. C. RICH,
Witness to both signatures.

(Signed) Captain H. H. HOMER,
E. J. MORRIS & CO.

I hereby certify the above to be a true copy of the original agreement.

E. J. MORRIS & CO.

520 WALNUT ST., *May* 23, 1867.

R. C. McMurtrie, Esq.

DEAR SIR: We write to inform you that the parties with whom Capt. Homer contracted to raise the schooner Madonna, yesterday reported to us that they will not undertake the work. They went to the schooner with their apparatus, and sent down a diver to examine her. They report she rests with about 8 to 10 feet of water on her deck at low tide, with about two feet mud on her deck, and much deposited in her, as the hatches, which were closed when she went down, are now off. A cask on her deck being sent up was found filled with mud, though it had no opening except the bung, from
107 which they infer a good deal has settled through the hatches; that she lies in a very exposed situation, and, in short, they throw up the contract, and say the whole value of vessel and cargo will not pay to raise her. We write to-day to three wrecking companies of New York, giving them a report of the case, and requesting to know whether they will undertake the work.

It is due to your clients that they should know the facts, and we are willing, if they wish it, to place the vessel at their disposal, if they think it possible to save anything from her, and will be glad if

they suggest anything omitted or overlooked by Capt. Homer in this matter, our desire being to satisfy your clients that he has done, and is doing everything in his power to lessen the damages in this unfortunate affair.

Truly yours,

FALLON & SERRILL..

502 WALNUT ST., *May* 28, 1867.

B. C. McMurtrie, Esq.

DEAR SIR: After a good deal of correspondence with several New York companies, the best offer we can get for raising the Madonna is 75 per cent. of vessel and cargo. This offer is made by two responsible companies, viz: the New York Submarine Co., No. 61 William street, and the Atlantic Submarine Co., No. 20 Nassau street, N. Y. We are about to close a contract with the latter company, at that rate. We again tender the vessel to your clients. If they think they can do better, or if they know of any companies or parties engaged in this business, who will take the contract on more favorable terms, we beg they will at once advise us. Please let us hear from you to-day, if you have any suggestion to make.

Yours, respecttully,

FALLON & SERRILL.

108 520 WALNUT ST., PHILADELPHIA, *May* 23, 1867.

Mr. Israel Merritt, Pres't or Ag't Coast Wrecking Co., N. Y.

DEAR SIR: We represent the owners of the schr. Madonna, which was sunk on the night of the 9th inst., in the river Delaware, some six or eight miles below Reedy island. She lies on the Pennsylvania side of the river, in about three or four fathoms water.

She was at anchor, and the steamer Stars and Stripes ran into her and stove a hole in her larboard quarter.

She was valued at about $9,000, and her cargo, which consists of coal principally, with 30 barrels beef on deck and 100 boxes oranges; was worth about $3,000.

We made a contract with a company at Lewiston to raise and bring her to Philadelphia, for 50 per cent., vessel and cargo. On going to her with their apparatus, they find there is about eight or ten feet of water on her deck at low tide, and the diver who examined her reports about two feet of mud deposited on her deck. Her hatches, which were closed when she went down, are now open, and it is probable a good deal of mud has settled through them, as a cask, which was on deck, was sent up and found to be filled with mud, though it has no opening except the bung. This company refuses to perform their contract, and will not undertake to raise her at all.

We write you thus in detail, as to her condition and value, that you may form some estimate of what you can do with her. We desire

to know whether you will undertake to raise her, and at what rate? Be good enough to favor us with an early reply.

Truly yours,

FALLON & SERRILL.

A duplicate of above sent to Messrs. Norton & Beers, ag't Atlantic Submarine Co., and to M. B. Edson, pres't F. Y. Submarine Co.

109 OFFICE OF COAST WRECKING CO., 65 WALL ST., N. Y.,
New York, May 24, 1867.

Messrs. Fallon & Serrill.

GENTS: Your letter dated 23d is received in regard to the sunken schr. Madonna, in the Delaware river.

Capt. Israel J. Merritt, our general agent, is now at Santiago de Cuba, ashore at Atlantic City, and will possibly be at home in course of a few days, and will not be able to give you anything definite as regards as to the raising of the said vessel until his return. You can confer with him (at Atlantic City) by mail; he will pass through your city on his way home, and then you can see him personally.

Very respectfully, JOHN YOUNG.

NEW YORK, *May* 29, 1867.

Messrs Fallon & Serrill.

GENTS: In reply to your letter in the case of the "Madonna," I would state, had I known of you vessel before, I think I could have done something for you; at present, I am busily engaged at the "Santiago de Cuba," ashore at Atlantic City, and other wrecks, which will take most of my time. I should judge, the parties at Lewiston are obliged to finish your work, as your, a regular contract, as everything we undertake, we generally undertake.

Very respectfully,

ISRAEL J. MERRITT,
65 *Wall street.*
Per JOHN YOUNG.

110 NEW YORK SUBMARINE COMPANY,
Underwriters' building, cor. Cedar and William sts.,
NEW YORK, *May* 24, 1867.

Messrs. Fallon & Serrill, 520 Walnut street, Philadelphia, Pa.

GENTLEMEN: Yours of 23d is received, and in reply, we make the following offer:

We will undertake to raise and bring to the port of Philadelphia the schooner "Madonna" and her cargo, for seventy-five per cent. (75 per cent.) salvage.

We are ready to send our wrecking steamer and apparatus at once, if this offer is accepted, and it is based upon the correctness of your statement as to her condition.

Please write me at once if you accept of this offer.

Very respectfully, yours,
M. B. EDSON, *Secretary.*

P. S. We will do it by the job, if you prefer it, for five thousand dollars.

WALNUT ST., PHILADELPHIA, *May* 25, 1867.

M. B. Edson, Eq.

DEAR SIR: Yours of the 24th, offering to raise the "Madonna" for 75 per cent., is received. We think your offer is high.

It must be remembered that our knowledge of the condition of the vessel is altogether derived from the statements of the parties who first proposed to raise her, and who are now naturally interested in giving the most unfavorable view of her condition.

One of the parties has since been examined on oath, and states that the mud was about a foot deep, instead of two.

111 We send you the following additional particulars: Her tonnage is 108 new measure and 147 old; her length 84 feet, beam 246; depth 8 feet; she had 189 tons of coal. We also correct our statement of the beef. She had 32 whole barrels and 10 half barrels, of which 14 whole and 8 half barrels have been taken out; her sails are taken off, but masts, spars, standing rigging, remain.

Please let us know by return mail whether you cannot make us a better offer.

Yours, truly,

FALLON & SERRILL.

NEW YORK SUBMARINE COMPANY,
Underwriters' Building, cor. Cedar and William sts.,
New York, May 27, 1867.

Messrs. Fallon & Serrill:

GENTLEMEN: Yours of 25th is received and contents noted. We are satisfied that our offer was as low as any reliable company or party would make, and now the job is less attractive than when we made the offer, as the beef has disappeared, or nearly so. However, if you inform us at once of the acceptance of our terms made on 24th, we will undertake the job.

Very respectfully,

M. B. EDSON,
Secretary.

OFFICE OF THE ATLANTIC SUBMARINE CO.,
20 *Nassau street, (Turner's Building,)*
New York, May 24, 1867.

Messrs. Fallon & Serrill:

GENTLEMEN: We are in receipt of your favor of the 23d instant.

112 A vessel at anchor struck by a steamer under speed must have been badly stoved. It is not a favorable or encouraging case, for the wreck lays in an exposed position, embedded in mud outside and full in; she of course was stripped by the wreckers.

Under the circumstances, we would not like to undertake it except on a salvage of 80 or 85 per cent. We would guarantee, however, to commence the work in a very short time, and carry the matter through vigorously.

Please inform us what the tonnage, length, beam and depths, and also the amount of coal of the wreck.

Yours, respectfully,

NORTON & BEERS.

OFFICE OF THE ATLANTIC SUBMARINE CO.,
20 *Nassau street*, (*Turner's Building.*)
New York, *May* 24, 1867.

Messrs. Fallon & Serrill:

GENTLEMEN: We wrote you this a. m. in answer to yours of 23d.

We beg leave to state further, that if your answer to our inquiries relative to the tonnage, size and age of the "Madonna," are favorable, we may do the work at a less rate.

This branch of work is our specialty; our prices may be high, but we pride ourselves on executing the undertaking expeditiously and first-class shape. We have always found that parties who undertake work of this kind at a low price, either leave it at the first difficulty, or if successful, the wreck is almost worthless from the rough manner in which she has been handled. Inquiries made of the New York underwriters will satisfy you.

Yours,

NORTON & BEERS.

113 520 WALNUT STREET,
Philadelphia, *May* 25, 1867.

Messrs. Norton & Beers:

DEAR SIRS: Your two favors of 24th are at hand. In answer to your inquiries, we reply, the "Madonna's" tonnage is 108 new measurement, 147 old; length, 84 feet; beams, 24.6, depth, 8 feet; amount of coal, 189 tons.

There were 32 bbls. and 10 half bbls. beef, of which 14 whole and 8 half bbls. have been removed; her sails were taken off, but masts and spars and standing rigging remain.

Your figures, we think, are high. Let us know by return mail what is the best you can do for us.

Y'rs, truly,

FALLON & SERRILL.

OFFICE OF THE ATLANTIC SUBMARINE CO.,
20 *Nassau street*, (*Turner's Building,*)
N. Y., *May* 29, 1867.

Messrs. Fallon & Serrill:

GENTLEMEN: Your reply dated the 25th is at hand. It must be borne in mind that the wreck lays in a very exposed position, and that, setting aside the mud, there is a heavy weight and lift. Our board seemed to think that 80 per cent. would be a fair price, but we have taken the responsibility of fixing it at seventy-five (75) per cent. salvage on vessels and cargo delivered in Philadelphia, which is the very best we can do.

We are much pressed with work this season, and if you will have the kindness o telegraph your reply on receipt of this, which, if favorable, we can arrange to commence immediately, and have it over in a short time; and if not, we can turn our attention to another job.

Yours, resp'y,

NORTON & BEERS.

114 OFFICE OF THE ATLANTIC TELEGRAPH COMPANY,
20 *Nassau street, (Turner's Building,)*
N. Y., June 19th, 1867.

Messrs. J. E. Bazley & Co.:

GENTLEMEN: We have been unable to accomplish anything in regard to the wreck of the schooner "Madonna" on account of the rough weather, and also because we could not obtain a "fit-out" in Philadelphia.

We have made arrangement with the Hoagland Wrecking Co., of New Brunswick, who will undertake the work, we think, the beginning of next week. We think it would not be advisable to withdraw the watchman from the wreck for the present.

Yours, resp'y,

NORTON & BEERS.

520 WALNUT STREET, PHIL'A,
May 28th, 1867.

Messrs. Norton & Beers, 20 Nassau street, N. Y.:

DEAR SIRS: Yours of yesterday, offering to raise the schooner "Madonna" for 75 per cent., vessel and cargo, is at hand. We thought it due to the owner of the steamer that has sunk the schooner to advise with them before closing with you. We have done so, and are now prepared to say that we accept your offer, and wish the work done as soon as possible. Should you wish a more formal contract signed, please forward it to us. Captain Homer, of the schooner, wrote to-day to the watchman in charge to deliver possession to you. The vessel was consigned here to Messrs. Bazley & Co., No. 122 S. Wh'fs, to whom you will report on arrival here.

Y'rs, respectfully,

FALLON & SERRILL.

115 This agreement, made at the city of Philadelphia, and State of Pennsylvania, on the 31st day of May, 1867, between George D. Norton and Frederick W. Beers, (Atlantic Submarine Co. of New York,) parties of the first part, and the agents for owners and insurers of the schooner Madonna and cargo, parties of the second part, witnesseth:

First. That the said parties of the first part will undertake, or cause to be undertaken, with as much despatch as is reasonably possible, the rising and saving of the schooner Madonna, her cargo and other contents and property on board or attached, now lying sunk in the Delaware river, below Reedy island, or of such portion or por-

tions thereof as may be recovered with reasonable efforts, and will deliver the said vessel at the port of Philadelphia, upon such dock or at such wharf as shall be designated by Captain Homer, within thirty-sixty hours after her arrival.

Second. After the recovery of said vessel, cargo, contents, &c., or of such portions as may be saved and delivered as aforesaid, the same shall be sold at public auction, on the usual notice, and seventy-five (75) per cent. of the proceeds of sale paid to the party of the first part hereto.

All expenses upon said vessel and cargo, incurred subsequent to putting her in the dock, shall be borne by the parties of the second part. In the event of Captain Homer failing to designate a dock accessible to the parties of the first part, within said thirty-six hours, then the said parties of the second part shall pay the sum of seventy-five dollars per day for every days' detention.

Witness our hands and seals.

GEO. D. NORTON,
F. W. BEERS,
For Atlantic Submarine Co.
H. H. HOMER, *Master.*
J. E. BAZLEY & CO.,
For Owners and Insurers.

Witnessed and approved by—

FALLON & SERRILL,
Proctor for Owners.

116 Testimony taken and exhibits given in evidence by respondents, sur reference to assess damages, and returned by the commissioner, George T. Bispham esquire.

DEC. 11, 1867.

William Fisher sworn:

I am a ship carpenter at Philadelphia; have been one for forty-five years, about; I think I know the schooner Madonna; I repaired her at my yard; she was there a couple weeks or ten days; she had been cut through by the ice, and I was repairing the damages. She was an eastern-built vessel, built out of all kinds of wood, short fastened. I should judge she was a pretty old vessel, looked pretty tolerable well about the top; her bottom did not look so well; she was an iron-fastened vessel; there was no copper; she drew a good bit of water. I do not think that at that time she would bring over $2,500; I have known better vessels sold for $4,200; a white oak vessel, the William Springs, was one that was sold; she was copper-fastened, and of a good grade, would carry about 300 tons; $2,500 was about as much as the Madonna would bring, in my opinion. The depositions of Mr. Veazie and Upton have been read to me.

(Depositions were read to the witness by Mr. Henry.)

A vessel built of Delaware white oak is worth just double an eastern-built vessel; it would last double the number of years; in an iron-

fastened eastern vessel the iron will eat up the vessel in from seven to ten years. A bill of repairs put upon a vessel does not add the amount to her value; sometimes it adds nothing, and fifty per cent. is the outside of what it adds. The reason why I say this is, that if you don't do the best thing the underwriters want you to do, you get no better grade, and grade is everything to a vessel. The selling value depends upon her grade; her carrying qualities and her draught of water. I have bought and sold vessels. I have never known repairs to add more than fifty per cent. to the value
117 of a vessel. I and my partner bought a brig for $1,800; I put $600 on her and sent her to sea; she had 22 cargoes in her without more repairs; this was the brig Lander. The Madonna could not be profitably employed for a general trade, unless she had a grade. A vessel which carries from 180 to 190, to be employed profitably, should not draw over seven feet of water. From her build I should judge the Madonna's draught would be considerable. She was on an old fashioned model. The whole thing in a vessel is to carry a big cargo with a light draught and a good grade. After hearing these depositions read, I would not like to give more than $2,500 for her.

Cross-examined.

By Mr. Serrill:

The woodwork was juniper, birch, beech; most of the frame was juniper or hackmatac. Juniper, or any soft wood, is worse on iron than hard wood. I do not know whether she was iron fastened. I do not know that she was copper fastened. The work we took out was iron; it was above light-water mark, I had nothing to do with the bottom. The trammels that I saw were beech or birch. I saw no locust ones, except what I put in; I noticed none. My bill was in the neighborhood of $500 or $600. I have an idea that some of the plank we took out were the original plank. If you do the last thing the underwriters want, you get better grade. If you put $5,000 on the vessel, and do the best thing the underwriters want, and get your grade, you do not raise the value of the vessel more than fifty per cent., the value of the repairs. I judge this, because I have known vessels to be repaired and sold, and this did not bring over 25 per cent. It might make some little difference whether the sale was forced or not; old vessels generally sell better in this port under the hammer.

Question. Do you know any case of a vessel with $5,000 repairs put upon her, and sold afterwards, not at a forced sale, at no more than fifty per cent. of her repairs?

118 Answer. I know a vessel bought for $1,400 and had $2,200 repairs put on her, and she was afterwards sold for $2,300 at private sale. I have got a vessel in my yard upon which I have stopped working, because I am not certain that she will bring the repairs. I do not know that there is any prejudice in this port against eastern-built vessels. We do not consider a Maine-built vessel equal to a

Delaware white oak, and that is the opinion everywhere. I suppose, in some cases, a vessel may be profitable for carrying lumber, when she would not be so in carrying dry cargo.

WILLIAM FISHER.

Mr. Henry offers in evidence extract from the marine intelligence in the North American, marked H 3.

Rheinard Vaughan sworn:

I am a ship carpenter in this city; I am a member of the firm of J. Vaughan & Son. I saw the Madonna at Mr. Fisher's yard. I am not in business with Mr. Fisher; my yard is a square below his; I was on the wharf the Madonna was tied to; I saw the workmen cutting out these planks; her top work looked comparatively good, and what I saw when they had her opened, I should judge the timber to be old; the frame, the planking I know nothing about; I could not say whether it was old or new; I did not notice the character of the wood she was built of. I have heard the testimony of Messrs. Veazie and Upton read by Mr. Watson and Mr. Henry. I have no knowledge of the value of vessels at Philadelphia. I have an interest in a vessel only a little over a year old that cost me $1,400; I would be glad to get $1,000.

Question. From the character of the vessel, as you learn it from what you saw and the testimony which has been read, what would you judge to be her actual value in May, 1867.

Answer. I do not think the vessel would bring over $2,500; I would not be willing to give over $2,000 or $2,500. I saw enough of the vessel to judge of the character of her model; she was short and not the same proportions which we would build here
119 for a profitable vessel; the models have changed some everywhere; she was an old fashioned vessel. The selling value of vessels depends on where they were built, who built them, their dimensions, and mostly on their age. The market values of vessels depends upon the rates of freight at the time they are offered for sale. The market values of vessels vary with the freight. It has always been said in business circles that the Delaware built vessels would bring double the eastern build; the difference is owing to the difference in timber; the Delaware timber being far superior to any other timber that grows, except, of course, white oak. They do as good work at the eastward as we do, except as to the fastening; their fastenings are short, but whether this was the case with the Madonna I can't say, because I did not see her. Repairs placed in an old vessel do not increase her selling value to the extent of the repairs placed on her; on a vessel seventeen years old the increase would depend on the condition of the vessel when she was placed in the carpenter's hands, and what she would bring at that time. I agree with Mr. Fisher that the increase in value from repairing would not be over fifty per cent. of the cost of repairs. What I mean is 50 per cent. above the worth of the vessel at the time she was placed in the carpenter's hands.

Q. Suppose a vessel 17 years old worth $1,500, and $4,000 repairs on her, how much would that increase her selling value?

A. Not over 50 per cent. of her value at that time—I mean the time she was placed in the carpenter's hands. I mean that the repairs would add 50 per cent. of the cost of the repairs to the value of the vessel, not over 50 per cent. I went on a tug to see the vessel where she lay; her sails were taken off; there was no difficulty in saving them; the vessel could have been raised at that time; I have worked at raising vessels, but never controlled the operation; she ought to have been taken hold of within two days, from two days to a week; barges, logs, screws and chains, would have
120 to be taken to raise her; I would have undertaken the job, in conjunction with Mr. Carter; the vessel lay about a mile from the western shore; a mile and a-half above Duck creek lighthouse; the job could have been done at that time for $1,500, delivered in Philadelphia.

Cross-examined.

By Mr. Serrill:

I never contracted to raise a vessel; I worked at it when I was an apprentice boy, about 15 years ago, up opposite Shackamaxon street; it was a canal schooner; no other time that I worked; I have seen a great deal of it done; I have been on vessels when they were working at the process. At the $1,500, the profit would depend on whether she was raised at first lift; if she was raised, $500 or $600 might be made; I would have left the apparatus and the details to Mr. Carter; we figured it up together; it was not on Mr. Carter's opinion that I would have undertaken the contract; I think the contract would have been an advantageous one.

Q. If so, why did you not apply for the job?

A. I think it was not advertised for some time afterwards, and at the time she was sunk; we would have applied; I knew she was sunk before she was advertised.

Q. If you knew she was sunk before she was advertised, why did you not apply in this profitable job when you knew it?

A. I object to answering that question; I went to look at the Madonna at Mr. Watson's request; Mr. Carter was with me.

Q. Did you ever inform Mr. Watson that you would do this job for $1,500.

A. I do not remember that I ever did; I might have said that it could be done for $1,500; I communicated to Mr. Watson, as one of his firm, it could be done for $1,500; I made no offer at all to Mr. Watson to do it; I never, to my recollection, applied to Mr. Watson to know who the owners were, or who wanted her raised; I
121 think I put down the details of the estimate of $1,500 on a piece of paper, which I think, is in my fire-proof, but I won't say positive; I do not recollect what I did with it.

RHEINARD K. VAUGHAN.

Henry K. Carter, sworn:

I am of the firm of Day, Carter & Day, ship builders; I never saw the Madonna until the afternoon; I went down in the tug boat on Saturday after she sunk; she was sunk on Thursday; I have raised vessels, several; it is not my business altogether, but I do it sometimes; I think if I get a pretty good price, I raise a vessel; when I first saw the Madonna, she was heading about E. S. E., keeled over on the port side, towards the eastward; it was two-thirds flood, and there was eight or ten feet water on her deck; she could have been raised with her cargo on board, by vessels, chains, and screws; she was in about three fathoms and one-half when we went to look at her; the raising depends on the amount of sea on; it might take two or three days, it might take two or three weeks; I made an estimate for raising her; I would have raised her for $1,500, if anybody had come after me to do it; I was not anxious for the job, for we were busy in the yard; I signed the estimate; she ought to have been raised as soon as possible; not later than a week; a vessel beds down in the mud; there could not have been a better place to take the vessel ashore, for she laid with a regular grade; I would raise the vessel more cheaply for cash, than for a salvage contract; in the latter case, we would have to be satisfied as to the value of the property lost, and this would be hard to tell when the vessel lay under water.

Cross-examined.

I did not go down to see the vessel at the request of Mr. Watson; I went with Mr. Vaughan; I do not know that I went down at
122 the instance of Mr. Watson; the captain of the Stars and Stripes came with Mr. Vaughan, and we all went down on the tug; I did not go over to Mr. Watson's place after we came back; I did not give him the estimate; I never saw Mr. Watson to know him before to-day; the estimate of $1,500 was left at Mr. Watson's with my knowledge; I expected the estimate to go to Mr. Watson's, when I signed my name to it; I never offered to Mr. Watson to do it for that; it is hard to estimate the profit in the $1,500; it would depend on circumstances; mud and weather; I do not think it was an advantageous contract; we might have made $500.

Q. Why did you not apply for this contract?

A. Because I got other business, ship building; the last vessel I raised, was a sloop at New Castle; I think her name was the Levy; I raised a steamship, the James S. Green, for Thomas Clyde; I raised one in 60 feet of water, below the navy yard, called the Lydia R. Ogdon; I raised them all for a certain price; I raised the last vessel about 1864; I have done nothing at the business since; I could generally get a better price than others.

Re-examined.

I have all the apparatus except boats, these I would have hired; I know by reputation Laban Lyons; business, he is a wrecker; I heard that he had the job from another wrecker.

By commissioner:

The reason I did not apply was because we were busy; had no boats, and did not think they would give my price; she had been sunk three or four weeks, when I heard that Lyons had the job.

HENRY K. CARTER.

123 Called by Mr. Serrill. Elias A. Upton, sworn:

I am one of the owners of the Madonna; I am the agent for the vessel; I have been interested in her, I think, eleven years; I do not know what her cost in building was; I know that she was called an extra-built vessel, including the sails and rigging; I think her building cost per ton would $50 to $55 old tonnage, on her tonnage of 147 tons. In 1864 $5,700 repairs were put on her at one time; vessels of this class are worth more to Bangor owners in the spring than in the fall, because our business is principally lumber carrying, and our port closes with ice about the 1st of December and remains so for four months or more; coasting vessels are in more demand and bring a better price in the spring, when business is commencing, than in the autumn; vessels of her class would, I suppose, bring more at a Bangor market than they would in Philadelphia.

The Madonna would have sold in Bangor, at public sale, for $8,000; I think she would have brought more; not one of the owners would have sold her for the money; I valued her at $9,000.

My business is to build and run vessels; our principal use is in the lumber trade, but we always take return cargoes: coal, flour and other articles. Since 1864 there has been an increase in the cost of building vessels; materials have gone up so much that building vessels in our place has been nearly stopped; last May to build a vessel of the size and capacity of the Madonna would cost from $12,000 to $12,500; the repairs in 1864, now made under the inspection of the authorized agent of the American Lloyds, and after the repairs she rated A 1½.

Cross-examined.

Question. Was there not between 1866 and 1867 a serious depreciation of vessel property?

Answer. As a general thing, in larger vessels, there has been considerable dullness in the sale, but little or no falling off in the cost of construction.

124 Q. I do not call your attention to the cost of construction, I am asking the selling value from 1866 to 1867.

A. There has been but a trifling falling off in the value of our coasting vessels in that time; I am speaking of Bangor.

E. A. UPTON.

Mr. Henry offers American Lloyds' Registry of American and foreign shipping, page 142, (.) Madonna, 108—11 feet water, iron fastened, built in Bangor, Maine, in 1864.

Mr. Serrill offers certificate marked "A 4."

DECEMBER 13, 1867.

David S. Stetson :

I am a large ship owner in this city; I own an interest in thirty-two sail—generally coasters; I am originally from Bath, Maine; I am acquainted with eastern built vessels; my father was a ship builder.

(Deposition of E. A. Upton read to witness, also of Homer and Veazie.)

Question. What, in your judgment, would be the value of the vessel as described in these depositions?

Answer. To any one that wanted her, that had business for her, that class vessel, she might be worth $2,000.

Q. State the circumstances on which you base your calculations?

A. First, she is not of the proper dimensions to make a profitable vessel; we always base the value of the vessel on what her profit would be in her employment; vessels of that draft, and carrying so small a cargo, is a very unprofitable freighting vessel; there are no such vessels built of that capacity now, that measures so deep.

The selling value of vessels depends upon the freighting business, whether it is high or low; vary from double to half.

125 Vessels that we had during the war, which paid us then 50 per cent. per year, now this year pay us only 10 per cent.; 10 per cent. is no profit because the depreciation is 10 per cent. a year; we charge that on our books; I mean taking depreciation into consideration, vessels yield no profit at all; New York market price, is the best value for vessel property in the United States; I am ship broker as well as owner.

It is part of my business to watch the sales of vessels; we sold a schooner, the Wm. L. Spring, in July, 1867, after advertising ten days in New York market; Philadelphia-built schooner, in 1854, was an A 1 vessel when launched; when sold stood A 2; she brought under hammer $4,200.

I owned one-quarter of her; she was knocked of to me; I was sent on to run her up, I disposed of her at my bid, without loss or cost to me; she was 216 tons, new; carried 330 tons; was thoroughly copper-fastened; I have repaired a good many old vessels; the bill of repairs put on a vessel is no index of her value, not at all.

It is because when a merchant commences repairing a vessel and opens her they find work that wants to be done and they go on further and further as they find the vessel decayed until they run up a bill that they wouldn't have thought of creating, providing they had known the state of the vessel when they started.

I have known vessels that were not worth the repairs by considerable when they came off the stocks. We have one repairing now, the schooner Allen; if we had known the condition when we started we should not have attempted to repair her; we would have sold her under the hammer; I don't think she would bring to-day under the

hammer what her bills will be; the sale of one-eighth or one-sixteenth of a vessel is not by any means a fair test of her value, because the sales of shares of vessels are not made in the regular market but to outside persons.

126 *Cross-examined.*

The purchase of a share, even by one advised by vessel owners, would not be a fair test of the value of the whole; because the test of a vessel is what she will bring in the whole; a person may want to invest in a piece of a vessel when he would not buy the whole; it is never considered that the sale of a piece of vessel is any test; what we consider as a market value is what she would bring in whole after advertisement. I never saw the "Madonna;" I only judge of her by the statement read.

Q. Might not a vessel be unprofitable here and yet be profitably employed at Bangor, in the lumber trade?

A. The only she could be profitable is where a man had business for her himself, on short voyages and in deep water; as a freighting vessel she would be certainly very unprofitable; she is not fitted for the lumber trade; there is no doubt the "Madonna" is not profitable because she was an old time vessel, large draft and small tonnage; she could not be profitably employed anywhere, even at Bangor, Maine. The selling value of a vessel depends a good deal upon the freight market; the variation would be according to description of vessel; a modern built vessel would vary only about 33 per cent.; an old vessel the variation would be a good deal more.

I can tell from the description that this vessel would not be profitable in the lumber trade to her Bangor owners. The vessels of our model will carry her cargo with only a draught of seven and seven and a-half feet, advantage being that light draught vessels get high freights because they can go to ports where large draught vessels can't go. A vessel drawing eleven feet water would trade to Philadelphia, Boston, Savannah, New Orleans, West Indies. Those cases in which repairs do not increase the value of vessels is when rot is found when the vessel is rebuilt, as in the depositions read to me. The case I mentioned in my examination-in-chief is not the rule, but very often happens. In the cost of rebuilding of a vessel one-third or one-half is taken up in tearing her down. It would be
127 according to circumstances whether the value of the vessel is increased by the balances; as a general rule it is increased.

Re-examined.

A vessel like the Madonna could not in Boston go up to Chelsea; she could not go to one-half the places in Boston harbor where light-draught vessels go. Wilmington is the only lumber port in North Carolina where she could go, and there are about fifteen lumber ports there. The Madonna is utterly unfit for a general lumber business; she is only fit for deep-water ports.

D. S. STETSON.

FEBRUARY 27TH, 1868.

Jairus Baker, sworn: I have been a captain of vessels, ship broker, merchant, and owner of vessels. I was born in Massachusetts.

Question. You have heard description of the Madonna read; state what you should judge from that was the market value of the vessel.

Answer. Well, I should judge, from the best of my knowledge and information, that $2,500 would be a fair valuation, and more than I would give for her. I mean for that class of vessel. My reasons are, 1st, because she is not profitable. I have owned vessels of that class since 1837, and am acquainted with them; her expenses are so heavy, in proportion to her small carrying capacity, that there is no money left to the owner, so as to be profitable. I have known vessels to bring less than the amount of repairs that have been put upon them. I have bought vessels of this description, where there has been a good deal of money laid out, for less than the amount of repairs.

Cross-examined.

I reside at the St. Lawrence Hotel. I am in the sugar-refinery business. I have been in this business about two years. I own
128 vessels now, and ever since 1837. I own interest in one bark and one schooner; one whole bark is owned by one firm, and I have an interest in a schooner; bark is 250 tons; schooner is also 250 tons. I own them to try to make something out of them. In speaking of vessels like the Madonna, I speak of her capacities and value as a freighting vessel, to make money as an investment. I would not give $2,500 for the Madonna, because I think I could put my money in something that could pay better. There are plenty schooners of her size in the lumber and coal business, very few of that capacity in the regular freighting business. Vessels of that class, larger, have been offered to me for sale since May last. There is the Ethan Allen, a vessel carrying 300 tons, was offered for $6,000, which I would rather have than two of the Madonna. I think she is ten years old, Wilmington-built. I have been engaged in building schooners.

JAIRUS BAKER.

Elisha C. Baker, sworn: I am an eastern man. I have been a captain of a vessel. I am acquainted with vessel property. I am interested in two schooners. I am acquainted with the rates at which vessels sell. I have heard the deposition in regard to the age, character and repairs of the Madonna. If I was going to buy her I should not be willing to give more than $2,500, or $2,800; for the purpose of running, I would not take her as a gift, because I could not earn a living in her. I would give the sum I had mentioned merely as a speculation, to sell again; that class of vessels cannot be sailed profitably, and could not at the time she was sunk. I have known vessels

of a larger carrying capacity than the Madonna, running for just two years, and then falling in debt. The Philip Larabee, a brig, was sold one or two months ago, in Providence; some 250 tons, new measurement, rated A 2; don't know how old. I have seen her; sold for $4,000. I know the party who bought her.

129 (From Lloyds: Philip Larabee, 286 tons, built in 1854, in Bath; copper and iron fastenings, A 2.)

I also know of the sale of the Charter Oak, carrying rising 200 tons of coal; she was fifteen years old; salable order; sold for $3,000; she was sold in Maine from Massachusetts.

(From Lloyds: Charter Oak, 140 tons, built in 1848, in Saybrook, Connecticut, rated A 2½.)

Do not recollect any other vessel. We hear from report what the selling values of vessels are.

Cross-examined.

I have been in the ship-chandlery business two years and a-half; sometimes the business requires the buying and selling of vessels in order to get the business of her. I am satisfied I could not make any money out of her. I do not mean to say that nobody else could. The value of the vessel depends on the carrying capacity of the vessel; does not always depend upon state of the freight market. The selling value of vessels at a particular time depends, to a certain extent, on the freight market at that time. The fact that a vessel does not pay her way does not prevent her from being of some value to their owners. As to the sales, of which I have spoken, I do not know under what circumstances they were made.

Re-examined.

The selling value of vessels depends on her employment. Since the war the supply of vessels has been greater than the demand; high freights do not make much difference in the value of vessels; temporary variations in freight don't make much difference. Vessel property has depreciated 30 or 40 per cent. since the war, I mean small vessels.

ELISHA C. BAKER.

Mr. Serrill offers affidavit of net earnings of the vessel, marked "S. 4, S. and B.

130 Henry D. Sherrard affirmed: I am president of the insurance in the State of Pennsylvania, and have been connected with the business for twenty years.

Question. The description of the Madonna, as contained in the depositions, has been read to you; what, from that, should you judge to be the insurable character of the vessel?

Answer. Uninsurable, (New York Am. Lloyds shown witness, in which the Madonna is rated A 2.)

If an applicant should come for insurance on that vessel, I should

ask for further information, referring from this remark, "rebuilt '64," that she was very much older than here represented, and decline the risk.

Cross-examined.

Q. These observations of yours are made solely with reference to insurance.

A. They are, entirely.

HENRY D. SHERRARD.

And afterwards, to wit, on the 10th day of April, A. D. 1868, the exceptions of the libellant to the commissioner's report and assessment of the damages were dismissed.

And afterwards, to wit, on the 13th day of April, A. D. 1868, the arguments of counsel being heard and duly considered, the report of commissioner assessing damages is confirmed, and decree entered in favor of libellants, in the words and figures following, to wit:

E. A. UPTON *et al.*
vs.
THE STEAMER STARS AND STRIPES.

And now April 13, 1868, the report of the commissioner ap-
131 pointed to assess damages is confirmed, and it is ordered, adjudged and decreed, that the libellants do recover of the defendants and their stipulators the amounts respectively awarded to them in said report, as follows:

Capt. H. H. Homer, the sum of		$493 57
Capt. H. H. Homer, for use of crew of Madonna		157 87½
Owners of cargo, viz:		
McWilliams & Paul	$690 75	
Bowen & Johnson	721 23	
Anthracite Ins. Co	990 60	
		2,406 58
E. A. Upton, for owners of the Madonna, viz:		
value of the Madonna	3,000 00	
Less proceeds sails, (nett,)	192 64	
	2,807 36	
Interest	147 32	
	2,954 68	
Expenses saving sails	94 12	
Freight	221 89½	
		3,270 69½
Total		6,328 72

And costs of suit.

Whereupon the said respondents pray leave to appeal from the decree aforesaid to the next Circuit Court of the United States for the eastern District of Pennsylvania, in the third circuit, which is allowed upon security being given.

132 UNITED STATES, *Eastern District of Pennsylvania*:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the District Court of the United States, in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, for damages sur collision therein lately depending, wherein Hiram H. Homer, master, on behalf of himself and others, owners of the schooner Madonna, is the libellant, against the steamer Stars and Stripes, and James Holmes, master, for himself and others, owners, respondent.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at Philadelphia, this 12th day of September, A. D. 1868, and in the ninety-third year of the independence of the said United States.

G. R. FOX,
Clerk Dist. Court,
Per C. S. LINCOLN.

133 *Exhibits referred to.—A. H. S. No.* 2.

Steamboat Pilots' License, original No. 55, act of Congress, Aug. 30, 1852.

The undersigned steamboat inspectors for the district of Philad'a, Pa., certify that Jno. Rowland, having been by them duly examined touching his qualifications as a 1st class pilot of a steamer from Philadelphia to Cape Henlopen, they are satisfied he possesses the requisite skill, and is trustworthy and faithful, and do license him to act as such within the said bounds, for one year from this date.

Given under our hands this 9th day of January, 1867.

(Signed) SAM'L ZANE,
Inspector of hulls.
" J. W. WAPLES,
Inspector of boilers.

N. B.—See classification inside.

I, Samuel Zane, local inspector of the district of Phila., Pa., certify that the above-named Jno. Rowland this day, before me, solemnly swore that he would faithfully and honestly, according to his best skill and judgment, without concealment or reservation, perform all the duties required of him as pilot by the act of Congress, approved Aug. 30, 1852, entitled "An act to amend an act entitled an act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes.

Given under my hand this 9th day of January, 1867.

(Signed) SAM'L ZANE.

A. H. S. No. 3.—Inspectors certificate steamer Stars and Stripes.

By authority of the United States of America.

STATE OF PENNSYLVANIA, *District of Philadelphia, ss:*

Application having been made in writing to the subscribers, inspectors for said district, to inspect the steamer Stars and Stripes of Philadelphia, in the State of Pennsylvania, whereof Thomas Wattson and others are owners, and John H. Howes is master, we having performed that service, now, on this 20th day of Sept., A. D. 1866, do certify that she was built at New York in the State of New York in the year 1861, is of 484 tons burthen, and is in all respects staunch, sea-worthy and in good condition for navigation, having suitable means for escape from the main to the upper deck in case of accident. That she is provided with 5 state rooms, with 10 berths in all; has a total of permanent or movable berths, to accommodate 10 cabin passengers.

That she has also berths suitable for deck, or other class pas-
134 sengers, to accommodate 12 persons. That she is a steamer sailing to and from Philadelphia, Pa., and Havanna, Ca., a distance of 1,500 miles or upward. That she is provided with one low pressure boiler 15½ feet long and 10 feet diameter of shell, constructed of charcoal-made iron of varying thickness, and made by Delameter of N. Y. in 1861; that they are in all respects conformable to law; that each boiler has been subjected to a hydrostatic pressure of 34 pounds to the square inch; that the maximum working power allowed was 25 lbs., determined by the rule prescribed by the act, which is three-quarters hydrostatic pressure. That there is one safety valve with an aggregate area of 26 square inches; that the load prescribed is such as to allow but 25 lbs. pressure per square inch, and left in charge of the engineer, and not withdrawn from interference by the officers of the boat. Has sufficient supply pipes and ample, 2½ in. diameter, and has sufficient means to keep the water at all times and under all circumstances up to four inches over the flues. Has 4 guage-cocks in the front of boilers. Has one water guager and 2 steam guages, all properly secured and arranged. Has one steam pipe of 8½ inches in diameter. Has one low pressure engine of 26 inches in diameter and 2 2-12 ft. stroke. Has 2 feed pumps 2¾ inch plunge, with 14 inches stroke, worked by the main engine. Has one independent steam-feed pump of 4½ inches diameter and 7 inches stroke. Has 2 fire-pumps, each equal to at least 4 inches diameter and 6 inches stroke, and 250 feet of hose, 20 fire-buckets, and 5 axes. Has 2 life-boats in good order, 1 metallic. Has 22 life-preservers, kept in convenient places, viz. cork jackets. Has additional steering apparatus, consisting of relieving tackle. We further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid, hose, boats, life-preservers, spark-arresters, blocks, rigging, anchors and other things are in conformity with the provisions of the law; and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a

steamer upon the waters herein specified, without peril to life from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and we further certify, that the said vessel is only to run within the following limits, to wit, Philadelphia, Pa., to Havanna, Ca., a distance of 1,500 miles, touching at the intermediate places and back.

[L. S.] (Signed) J. W. WAPLES,
Inspector of boilers.

[L. S.] SAM'L ZANE,
Inspector of hulls.

[5-ct. stamp.]

STATE OF PENNSYLVANIA, *District of Philadelphia, ss:*

Personally appeared before the undersigned, notary republic in and for the said State, J. W. Waples and Saml. Zane, duly appointed inspectors of hulls and steam boilers, for the district of Philada., and made solemn oath that the above certificate of inspection is just and true.

Sworn and subscribed before me this 20th day Sept., A. D. 1866.

[L. S.] E. H. BAILEY, *Not. Pub.*

I hereby certify that the above is a true copy of the original on file in this office. Port of twenty-first day of September, 1866.

(S'gd) W'M HARBESON,
Dep. Surveyor.

135 A. H. S. No. 4.—*First Rate Pilot.*

Port of Philada., ss:

This may certify unto all persons whom these presents may concern, that John Rowland, pilot in the bay and river of Delaware, has been duly examined before the warders of this port appointed by an act of assembly of the State of Pennsylvania, intitled an act to establish a board of warders for the port of Philadelphia, and for other purposes therein mentioned; dated the twenty-ninth day of March, anno Domini 1803, and has been found by them to be properly qualified to act as a pilot in the said bay and river on board of ships or vessels of any draught of water. And the said John Rowland is hereby authorized to act in that station on board any such ships or vessels accordingly.

Given at Philadelphia the 12th day of Sept. anno one thousand eight hundred and sixty-five.

[L. S.] (Signed) ISAAC C. PEARSON,
Acting Master Warder.

Attest:
GEO. B. MILLER, *Clerk.*

I hereby certify that Jno. Rowland hasbeen duly sworn in accordance with the act of assembly 14th May, 1861.

(Signed) ISAAC C. PEARSON,
Acting Master Warder.

(Endorsed:) John Rowland, first class pilot out, September 5, 1866. Extended September 5, 1867. Geo. B. Miller, sec'ty.

136 In the C. C. U. S., E. D. of Pa.

HOMER
vs.
THE STARS AND STRIPES. } 1868. No. 1.

Thomas B. Wattson, being duly sworn, says: I am one of the parties intervening in this cause, and was, at the time the libel was filed, and still am, one of the owners of the steamer Stars and Stripes.

The said steamer, at the time of the occurrence mentioned in the libel, was a steamer engaged in the carriage of passengers between Havana and Philadelphia, and was then on a voyage between said ports.

(S'd) THOS. B. WATTSON.

Sworn and subscribed before me this ninth day of October, 1868.

[SEAL.] C. J. PICOT,
Notary Public.

And afterwards, to wit, in the Circuit Court on the fifteenth day of October, A. D. 1868, the following decree was entered, to wit:

And now, October 15, A. D. 1868, the above case having been heard and considered, it is ordered, decreed and adjudged, that the decree of the District Court be affirmed, and that the libellants do recover from the respondents the sum of six thousand three hundred and twenty-eight dollars and seventy-two cents, with interest from April 13th, 1868, the date of the decree in the said District Court, with costs of suit.

Whereupon an appeal to the Supreme Court is prayed by respondents and allowed, sec. reg.

137 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain plea, civil and maritime, therein lately depending, wherein Hiram H. Homer, master, on behalf of himself and others, owners of the schooner Madonna, is the libellant, against the steamer Stars and Stripes, respondent.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this twenty-eighth day of October, A. D. 1868, and in the ninety-third year of the independence of the said United States.

[SEAL.] BENJ. PATTON,
Clerk C. C. U. S.
Per W. GRIER HIBLER.